660

SUPREME COURT OF THE UNITED STATES.

No. ~~119~~. 37.

JAMES GREENLEAF, PLAINTIFF IN ERROR,

VERSUS

JAMES BIRTH.

IN ERROR TO THE CIRCUIT COURT U. S. FOR ALEXANDRIA, D. C.

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1—A.

DISTRICT OF COLUMBIA, *to wit:*

To James Birth, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the City of Washington, being the present seat of the National Government, on the second Monday in January next, pursuant to a writ of error filed in the clerk's office of the United States' circuit court of the District of Columbia for the county of Alexandria, wherein James Greenleaf's lessee is plaintiff, and James Birth is defendant, to show cause, if any there be, why the judgment rendered against the said James Greenleaf, as in the said writ of error men

tioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the honorable John Marshall, chief justice of the United States, this 22d day of June, 1833.

B. THRUSTON, *Asst'nt Judge, &c.*

Service, by leaving a copy of the within notice with James Birth this day, 5th July, 1833.

H. ASHTON, *Marshal.*

2—A.

UNITED STATES OF AMERICA, } *to wit:*
District of Columbia, }

The President of the United States of America, to the judges of the United States' circuit court of the District of Columbia, greeting:

Because in the record and proceedings, and also the rendering of the judgment of a plea which is in the said court for the county of Alexandria, before you or some of you, between James Greenleaf, lessee, and James Birth, in an action of ejectment, manifest error hath happened to the great damage of the said James Greenleaf, as by his complaint appears, and we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, in the District of Columbia, being the present seat of the National Government, on the second Monday in January next, that the record and proceedings aforesaid, being seen and inspected, the said Supreme Court may cause further to be done therein, what of right, and according to the laws and customs of the United States, should be done.

Witness, the honorable John Marshall, chief justice of the United States, this second day of June, eighteen hundred and thirty-three.

EDM. I. LEE, *C. C.*

3—A.

Know all men by these presents, that we, James Greenleaf and William Brent, are held and firmly bound unto James Birth in the full and just sum of two hundred dollars: to the payment whereof, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 22d day of June, 1833.

The condition of the above obligation is such, that whereas the said James Birth, late at an United States' circuit court of the District of Columbia for the county of Alexandria, by the judgment of the said court, on the 2d day of June, 1833, recovered against the above bound James Greenleaf, lessee of John Doe, his costs expended in the defence of an action of ejectment, and the said James Greenleaf having obtained a writ of error, and filed a

copy thereof in the clerk's office of the said circuit court of the District of Columbia for the county of Alexandria, to reverse the judgment in the aforesaid suit, and the honorable Buckner Thruston, assistant judge of the circuit court of the District of Columbia, having signed a citation on the above mentioned writ of error, directed to the said James Birth, admonishing him to be and appear before the Supreme Court of the United States to be holden at Washington, being the present seat of the National Government, on the second Monday in January next.

Now, if the said James Greenleaf, the plaintiff in error, shall prosecute his writ to effect, and answer all damages and costs if he shall fail to make his plea good, then the above obligation to be void, or else to remain in full force, power, and virtue.

JAMES GREENLEAF. [SEAL.]
WILLIAM BRENT. [SEAL.]

Sealed and delivered in the presence of
CHARLES S. WALLACK.

This bond and surety are approved 3d July, 1833.
B. THRUSTON.

A copy. Teste:
EDM. I. LEE, *C. C.*

Pleas before the honorable the judges of the United States circuit court of the District of Columbia for the county of Alexandria, at the court-house in the town of Alexandria, on the seventh day of June, 1833.

Title. JAMES GREENLEAF's lessee, plaintiff, *against* JAMES BIRTH, defendant. } In ejectment.

Be it remembered that, heretofore, to wit: at *at* a court held for the district and county aforesaid, the 9th day of April, 1832, the plaintiff produced to the court a mandate from the honorable the Supreme Court of the United States, reversing the judgment of this court, and remanding the cause, with directions to award a venire facias de novo; whereupon, it was ordered that this cause be re-docketed, and a venire facias de novo was awarded, as by the said mandate directed. Said mandate is in the words following, to wit:

Mandate filed.

Cause re-docketed, and venire facias de novo awarded.

Mandate. UNITED STATES OF AMERICA, *ss.:*

[L. S.] The President of the United States of America to the honorable the judges of the circuit court of the United States for the District of Columbia, holden in and for the county of Alexandria, greeting:

Whereas lately, in the circuit court of the United States, for the District of Columbia, before you, or some of you, in a cause wherein the lessee of James Greenleaf was plaintiff, and James Birth was defendant, in ejectment; the judgment of the said circuit court was in the following words, viz: "Therefore, it is considered by the court that the plaintiff take nothing by his bill, but for his false clamor be in mercy; and that the defendant go thereof without day, and recover of the lessor of the plaintiff, his costs by him about his defence in this behalf expended," as by the inspection of the transcript

of the record of the said circuit court, which was brought into the Supreme Court of the United States by virtue of a writ of error, agreeably to the act of Congress in such case made and provided, fully and at large appears; and, whereas, in the present term of January, in the year of our Lord one thousand eight hundred and thirty-two, the said cause came on to be heard before the said Supreme Court on the said transcript of the record, and was argued by counsel; on consideration whereof, it is the opinion of this court that there was error in the circuit court in refusing to instruct the jury that the deed from Greenleaf to Morris and Nicholson, in the first bill of exceptions mentioned, unaccompanied by any other evidence, did not show such an outstanding title as was sufficient to bar the plaintiff's recovery in this suit, as is in the same bill of exceptions mentioned. And it is further the opinion of this court, that there was error in the circuit court in admitting the proceedings in the case of the said James Greenleaf, an insolvent, before the chancellor of Maryland, in the second bill of exceptions mentioned; and, also, in instructing the jury that the act of Assembly of Maryland of 1798, ch. 64, and proceedings of insolvency aforesaid, did show a legal title out of the plaintiff, and did preclude a recovery in this suit on the first count in the plaintiff's declaration; and, also, in refusing to instruct the jury that, under the operation of the proceedings in Maryland and Pennsylvania, in the same bill of exceptions mentioned, the legal title to the premises in the declaration mentioned, notwithstanding said conveyance was not divested from the said James Greenleaf by any thing by the defendant so as aforesaid shown, as in the same bill of exceptions is mentioned. It is, therefore, considered and adjudged by the court that, for the error aforesaid, the judgment of the said circuit court be, and the same is hereby reversed, and the cause be remanded to the circuit court, with directions to award a venire facias de novo.

January 28th.

You, therefore, are hereby commanded that such further proceedings be had in said cause, in conformity with the judgment of said Supreme Court, as according to right and justice, and the laws of the United States, ought to be had, the said writ of error notwithstanding.

Witness, the honorable John Marshall, chief justice of said Supreme Court, the second Monday of January, in the year of our Lord one thousand eight hundred and thirty-two.

WM. THOS. CARROLL,
Clerk of the Supreme Court of the United States.

And at another day, to wit: at a court continued and held for the said district and county, the sixth day of November, 1832, came the parties aforesaid, by their attorneys; and thereupon came a jury, to wit: Benoni Wheat, John Wood, William Veitch, Bartholomew Rotchford, Henry Chatham, Samuel Wheeler, Orlando S. Morse, William Yeaton, George Dale, Thomas Whittle, Samuel Peach, and Jonathan Janney, who, being sworn and affirmed, well and truly to try the issue joined by consent of parties, and with the assent of the court, are continued until to-morrow.

Jury sworn and cont'd till to-morrow.

And at a court continued and held as aforesaid, the seventh day of November, 1832, the jury heretofore sworn in this case, appeared in court according to their adjournment, and by consent of parties, and with the assent of the court, are continued until to-morrow.

Cont'd till to-morrow.

Leave given plaintiff to amend his decl'n & extend his term, & amended decl'n filed. Continued.

And at another day, to wit: at a court continued and held as aforesaid, the eighth day of November, 1832, came the parties aforesaid, by their attorneys, and leave is given the lessor of the plaintiff to extend his term, and to amend his declaration, and amended declaration filed; and, by consent, a juror is withdrawn, and the cause is continued.

And at another day, to wit: at a court continued and held for the district and county aforesaid, the third day of June, 1833, came the parties aforesaid, by their attorneys; and thereupon, came a jury, to wit: Aaron D. Harmon, William H. Thompson, Charles McKnight, Samuel B. Larmour, Presley Jacobs, Thomas Jacobs, Joseph Smith, Robert Conway, William Stabler, George Drinker, Thomas Brocchus, and George P. Wise, who, being sworn and affirmed, well and truly to try the issue joined, are, with consent of parties, and the assent of the court, continued until to-morrow.

Jury sworn and cont'd t'll to-morrow.

And at a court continued and held as aforesaid, the fourth day of June, 1833, the jury appeared in court pursuant to their adjournment, and, with the consent of parties, and the assent of the court, are continued until to-morrow.

Cont'd t'll to-morrow.

And at court continued and held as aforesaid, the fifth day of June, 1833, the jury appeared in court pursuant to their adjournment, and, with the consent of parties, and the assent of the court, are continued until to-morrow.

Same.

And at a court continued and held as aforesaid, the sixth day of June, 1833, the jury appeared in court, and having heard the testimony and the arguments of counsel, retired to consider of their verdict.

And now, here, at this day, to wit: at a court continued and held for the district and county aforesaid, the seventh day of June, 1833, the jury sworn to try the issue in this cause, appeared in court, and returned the following verdict: "We of the jury find for the defendant." Therefore, it is considered by the court that the plaintiff take nothing by his bill, but for his false clamor be in mercy; and that the defendant go thereof without day, and recover of the lessor of the plaintiff, his costs by him about his defence in this behalf expended.

Verdict and judgment.

The plaintiff reserved two bills of exceptions, and the defendant reserved one, which are signed, sealed, and ordered to be enrolled.

Plaintiff's first bill of exceptions.

Plaintiff's first bill of exceptions.

GREENLEAF's lessee,
vs.
BIRTH.
} In ejectment.

The plaintiff, to support the issue on his part above joined, showed a legal title to and seisin in fee of the premises in dispute, regularly deduced by mesne conveyances from the original patentee to James Greenleaf, the lessor of the plaintiff, down to the 13th May, 1796, and the original certificate of the division and allotment (A) of square No. 75, between Robert Peter and James Greenleaf, the original proprietors thereof, and the commissioners of the City of Washington; *prout* the same hereto annexed. And the defendant admitting the plaintiff's title down to the time aforesaid, then to support the issue on his part above joined, produced and read in evidence to the jury the following deeds and documents, to wit:

1. Articles of agreement, dated July 10, 1795, between the said James Greenleaf, and Robert Morris and John Nicholson; *prout* the same hereto annexed, No. 1.

2. A deed from said James Greenleaf, to said Morris and Nicholson, dated May 13, 1796; *prout* the same hereto annexed, No. 2.

3. A deed from said Morris and Nicholson, to Duncanson, Forrest, and Deakins, dated October 26, 1796; *prout* the same hereto annexed, No. 3.

4. A deed from said Duncanson, to said Deakins and Forrest, dated August 16, 1797; *prout* the same hereto annexed, No. 4.

5. The last will of said Deakins, dated 2d March, 1798; *prout* the same hereto annexed, No. 5.

6. A deed from Francis Deakins, the devisee in said will named, to said Forrest, dated May 31, 1802; *prout* the same hereto annexed, No. 6.

7. An agreement dated the 16th October, 1799, signed and sealed by said Forrest to sell the lot in dispute, with another lot therein mentioned, to Shaw and Birth, upon certain terms therein mentioned, with a certain endorsement in writing on said agreement, signed by said Forrest, dated January 18, 1802; and, also, the promissory note referred to in said endorsement; *prout* the said agreement, endorsement, and note hereto annexed, No. 7.

8. The record of the proceedings in the matter of the bankruptcy of said Forrest, showing that, on the 6th July, 1802, a commission of bankruptcy was awarded and issued against him, and that the commissioners therein named, duly declared him bankrupt; that John Hewitt was duly chosen his assignee, to whom the said commissioners, on 30th July, 1802, duly conveyed and assigned all his real, personal, and mixed estate; and that said Forrest was duly discharged under said commission on the 11th September, 1802. It is agreed that certified copies of the proceedings may be used in the Supreme Court.

9. A deed from John Hewitt, the assignee of said Forrest, in the said proceedings mentioned, to said Shaw and Birth, dated November 23, 1807; *prout* the same hereto annexed, No. 8.

10. The proceedings in a suit in chancery between said Birth and the heirs at law of said Shaw, in which the circuit court of this district on the 13th January, 1827, decreed the sale of all said Shaw's real estates, in aid of his personal estate for payment of his debts; that Thomas Sandiford was appointed trustee for such purpose; that he exposed said Shaw's estates to sale, and among the others, his undivided moiety of said lot 17, in square 75, at which sale, said Birth became the purchaser of said moiety for the sum of $906; and that said sale was duly ratified, and the purchase money paid to the said trustee, who was directed by the court to convey to said Birth. Copies of the proceedings may be used in the Supreme Court.

11. A deed from Thomas Sandiford, the trustee in said proceedings mentioned, to defendant, dated August 7, 1828; *prout* the same hereto annexed, No. 9.

Testimony of Thos. Monroe.

And the defendant further to support the issue on his part above joined, produced Thomas Monroe, who, being sworn and examined, testified that he was clerk to the late commissioners of Washington from the year 1791 to the year 1802, and superintendent of said city from the time of the abolition of said board of commissioners, in the year 1802, till the year 1817; that the first occupation he knew of the lot in controversy, was in May, 1802, when he removed from Georgetown to

Washington, and lived in the neighborhood of the premises; that there was then a house on said lot, in which said Shaw and Birth, who carried on the business of stonecutter in partnership, then resided and continued to reside; how long the house had been built or occupied by Shaw and Birth before May, 1802, he knows not; he then found them there residing aforesaid; that the said house is in a public situation on the main avenue, between the President's house and Georgetown, and obvious to passers-by; that said Greenleaf was frequently in the City of Washington in the years 1794 and 1795, but witness did not see him in Washington from the year 1795 to 1802, and does not think he was often there in that period; that, from 1802, he occasionally visited Washington, attending to the property there in which he was interested, and from about the year 1815 resided pretty much in Washington; witness recollects having seen said Greenleaf in Washington about the time he took the benefit of the Maryland insolvent law; that the witness never heard of the claim of said Greenleaf to the lot in controversy till shortly before the commencement of this suit; that the witness had heard soon after the transaction of the contract of Gen. Walter Stewart with Greenleaf, Morris, and Nicholson, for the purchase of the lot in controversy, and several other lots in Washington; that said Stewart was an extensive purchaser of city lots, both from Greenleaf, Morris, and Nicholson, and from the commissioners of the city; that he built some houses, and commenced others, which were never finished, on the lots so purchased by him; that he failed in business some time after his said purchases, and died insolvent some time about the year 1796; that, for the lots purchased by him of the commissioners, he had paid two instalments of the purchase money, and, failing to pay the residue of purchase money, the public lots were re sold after his death by the commissioners, pursuant to the authority vested in them by law; that one —— Davis came on to Washington, as agent of said Stewart, or of his representatives, to transact and manage the affairs and interests of said Stewart, in regard to the property so purchased by Stewart; that the said agent transacted business with the commissioners, and with the witness as superintendent, in regard to the public property purchased of them by Stewart; that after the said conveyance from Greenleaf to Morris and Nicholson, the latter seemed to have the management and control of all the property conveyed by that instrument, and also to be generally recognised as having the settlement of the sales of the joint property of Morris, Nicholson, and Greenleaf, made before said conveyance, and as having the right to receive the purchase money from the several purchasers; and said Davis, as such agent, after the said conveyance from Greenleaf to Morris and Nicholson, and after Stewart's death, as witness believes, transacted some business with Morris and Nicholson; that the purchase money paid under the contracts herein stated, to wit: sales made to Thos. Johnson, of lots No. 1, 2, 3, 13, 14, 15, 16, or square No. 15; to Tristram Dalton, of square No. 54; to Thos. Law, Wm. M. Duncanson, Geo. Ralph, Jas. Barry, Jas. R. Dermott, Henry Edwards, and Edw. Burroughs, were applied to the credit of Morris and Nicholson, with the commissioners of the said city under their contract for the purchase of 6,000 lots; that the sales mentioned in said list were made prior to the 10th July, 1795, and the said purchase moneys paid after the said 13th July, 1796; that the books of the said commissioners were always open to the view of all persons who chose to inspect them; and that, during the period of such payments, Judge Cranch, who was then the agent of said Greenleaf, was very

frequently at the office of the said commissioners, inspecting and referring to the books and papers relating to the proceedings of the said commissioners, and to the accounts and transactions of said Morris and Nicholson, and Greenleaf with them.

Testimony of W. Waters. And defendant further proved by William Waters, a witness sworn, &c., that he has lived in Washington since 1809, and before that lived in Georgetown from the year 1791; and, while living in Georgetown, almost daily went into Washington, passing by the premises in controversy; that the wooden part of the house now on the premises was the first improvement on the square 75.

Corp'n taxes paid by S. & B. And the defendant, further to support the issue on his part, &c., proved that the said lot 17, in square 75, was assessed on the corporation books to Shaw and Birth, from the year 1803 to the year 1828; that the first assessment of corporation taxes in Washington was in the year 1803; and, further, that the said square 75 is not either of the squares described in said deed from Greenleaf to Morris and Nicholson as the square lying next to and south of square 506, and the other square lying next to and south of the square last aforesaid.

Not either of the specifically excepted squares.

Testimony of J. Forrest. And defendant, further to support the issue on his part, &c., proved by Joseph Forest, a witness sworn, &c., that he drew and attested the written agreement aforesaid between U. Forrest and Shaw and Birth; that the first occupation he knew of said lot was by Shaw and Birth, after said agreement; that the wooden part of the house was first built, and was built before Hodgson's house, in which the War Department was kept; that, at the date of said contract, and for some time before and after, witness had the superintendence of the property in Washington in which said U. Forrest was interested, and, among others, of his lots in square 75; that witness, as deputy of the United States' marshal for the district of Maryland, served some process or citation on said Greenleaf at Georgetown, under the insolvent law or bankrupt law.

W. Brent, clerk, &c. And the defendant further proved by William Brent, clerk of Washington county, that he had searched among the records of his office, and that no deed or other conveyance from Jas. Greenleaf, from 1792 to May 6, 1797, to any person or persons, body politic or corporate, for lot No. 17, square 75, nor any contract or agreement for the sale of said lot, can be found among the said records. And the said record books for said period were here produced before the court and jury.

And the plaintiff objected, by his counsel, to the admissibility and competency of so much of the said last evidence, in particular as went to negative the existence on the said record of any such contract or agreement for the sale of said lot; but the court overruled the objection, and admitted the whole of the said evidence to go to the jury; to which the plaintiff excepts, &c.

The plaintiff, then, further to support the issue on his part, offered to prove that, on the 1st day of November, in the year 1799, the said Uriah Forrest wrote to William Cranch, then the trustee for said Greenleaf, the original letter, signed by said Forrest, and addressed to said Cranch, *prout* the same hereto annexed, No. 10; and that said letter was, on the same day, delivered by said Forrest to said Cranch; and that said Cranch wrote an answer thereto, dated 2d November, 1799, *prout* the same hereto annexed, No. 11.

And upon the whole evidence so given on the part of the plaintiff and defendant, respectively, the plaintiff, by his counsel, prayed the court to deliver to the jury an instruction to the effect following, to wit:

1st instruction prayed by plt'ff.

1. That, upon the evidence so produced on the part of the defendant as aforesaid, the defendant has not shown a sufficient legal title to the premises in controversy, vested, by means of the deeds and documents aforesaid, in said defendant.

Refused.

Which instruction the court refused to give, as prayed by the plaintiff's counsel; but, upon the prayer of the defendant, gave the following instruction:

Instruction given on prayer of def't.

If the jury should believe, from the said evidence, that, prior to October, 1799, Uriah Forrest was in possession of the premises in the declaration mentioned, and that he agreed to sell the same to Shaw and Birth on 16th October, 1799; and that said Shaw and Birth, and the defendant claiming under them, have been in possession of the same ever since, and that they have paid the taxes on the same to the corporation of Washington ever since 1803, when city property was first assessed; and that no claim or demand for said premises was ever made upon them or said defendant until the bringing of this suit in 1818, then it is competent for the jury to presume that the title to said premises passed from James Greenleaf by the deed of 13th May, 1796, and that said premises were not included in any of the exceptions of said deed.

And the plaintiff, thereupon, excepting to such refusal, and to the instruction last given as aforesaid, further prayed the court to deliver to the jury an instruction to the effect following, to wit:

2d prayer of plt'ff.

2. That, before the defendant can establish a sufficient legal title to the premises in controversy, derived from the said James Greenleaf, by virtue of the deeds and documents above given in evidence on the part of defendant as aforesaid, it is incumbent on him to identify and prove to the satisfaction of the jury that the premises in controversy were included in the property actually bargained and sold and conveyed by said deed of the 13th May, 1796, from James Greenleaf to Morris and Nicholson, and were not included in the exceptions contained in said deed, of all such squares, lots, lands or tenements, as were either conveyed or sold, or agreed to be conveyed, either by all or either of them, the said James Greenleaf, Robert Morris, and John Nicholson, or any of their agents or attorneys, to any person or persons whatever, at any time prior to the said 10th day of July, in the year of our Lord 1795.

Granted, and further instruction on prayer of defendant.

Which last instruction was given as prayed; and the court, thereupon, further instructed the jury, upon the application of defendant, that, from the evidence aforesaid, so offered on the part of defendant, it is competent for the jury to presume that the premises in the declaration mentioned were included in the property actually bargained and sold and conveyed by the said deed of 13th May, 1796, from said Greenleaf to Morris and Nicholson, and were not included in the exceptions contained in said deed as aforesaid.

To which refusal of the court to grant the instruction first above prayed on the part of the plaintiff, and to the two instructions added as aforesaid at the instance of the defendant, as well as to all and singular the foregoing decisions of the court, so admitting the evidence offered on the part of the defendant, and objected to by plaintiff, and rejecting the evidence offered on

the part of the plaintiff, and objected to by defendant as aforesaid, the plaintiff, by his counsel, excepts; and this his bill of exceptions is sealed, &c, this fourth day of June, 1833.

B. THRUSTON. [SEAL.]
JAMES S. MORSELL. [SEAL.]

Documents referred to in plaintiff's first bill of exceptions.

A.

Division of square 75.

The commissioners, and Robert Peter and James Greenleaf, the original proprietors of this square, number seventy-five, in the city of Washington, have agreed on the division thereof in manner following, to wit: the lot numbered 1, 2, 3, 4, 5, 16, 17, 18, 19, and 20, are to remain to the said James Greenleaf; and the lots numbered 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15, are subject to be sold, agreeably to the deeds of trust concerning lands in the said city. Witness our hands, this twenty-seventh day of June, one thousand seven hundred and ninety-five.

GUST. SCOTT,
WM. THORNTON,
ROB'T PETER, } *Commissioners.*

Witness:
C. RICHMOND.
J. JOHNSTON, jr.

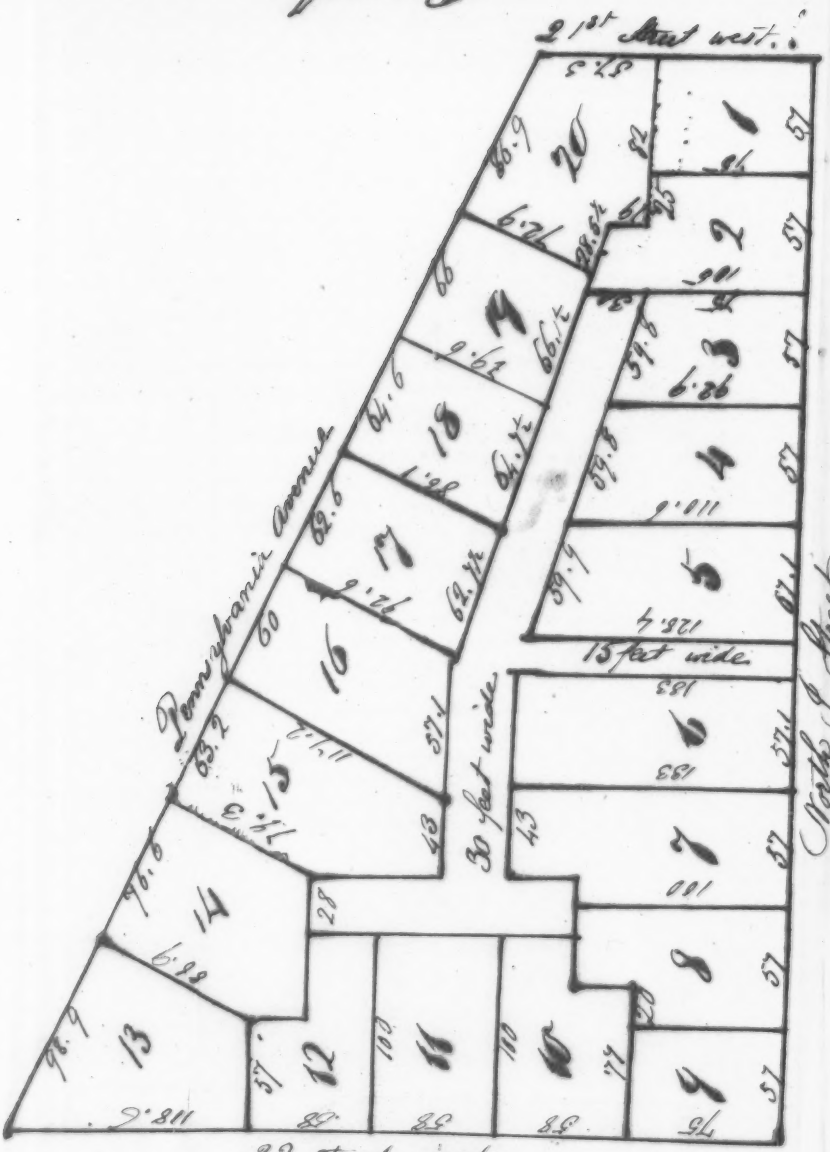
JAMES GREENLEAF,
By WILLIAM CRANCH, *his Att'y.*

No. 1.

Agreement: J. Greenleaf and Morris and Nicholson.

Articles of agreement, indented, made and concluded, this tenth day of July, in the year of our Lord one thousand seven hundred and ninety-five, between James Greenleaf, of the city of New York, esquire, of the one part, and Robert Morris and John Nicholson, of the city of Philadelphia, esquires, of the other part: Whereas sundry contracts and purchases have been made, between the twenty-second day of September, in the year of our Lord seventeen hundred and ninety-three, and the date of these presents, by the said James Greenleaf, Robert Morris, and John Nicholson, or some of them, with the commissioners of the city of Washington, and several other persons for the purchase of a great number of lots, situate, lying, and being in the said city of Washington: that is to say; by the said Robert Morris and James Greenleaf, a contract with the said commissioners for the purchase of 6,000 lots; by the said James Greenleaf, a contract with Daniel Carroll, of Duddington, for the purchase of 220 lots; also, a contract with Notley Young, for the purchase of 428¼ lots; also, a contract with William Bayly, for the purchase of 119¼ lots; also, a contract with Messieures Forrest and Stoddert, for the purchase of 239¼ lots; and by the said John Nicholson, a contract with William King for 180 lots, making in the whole 7,115¼ lots; in all which contracts and purchases the said James Greenleaf, Robert Morris, and John Nicholson, have been, from the dates of the said respective contracts, equally concerned as partners and tenants in common, in the proportion of one-third part each; out of which said lots, about 990 have been sold to sundry persons, so that, at present, about 6,125¼ lots remain the property of the said James Greenleaf, Robert Morris, and

Square 75



True copy.

J. Elgar. Com. P. B.

of John Nicholson, in partnership as aforesaid, on part of which said lots, many buildings and valuable improvements have been made and erected, and are now making and erecting at the joint and equal expense of the said partners. And whereas the said James Greenleaf hath, in his own and private and separate right, purchased eight hundred other lots, situate in the said city of Washington, part whereof lie on the northwest side of the capitol and the northeast side of the President's house, and the residue on the N. W. side of the President's house and the east side of Georgetown. Now, this indenture witnesseth, that the said James Greenleaf, and the said Robert Morris, and John Nicholson, for themselves, their heirs, executors and administrators, have covenanted and agreed, and do hereby covenant and agree with each other, in manner and form following: that is to say; the said James Greenleaf shall sell to the said Robert Morris and John Nicholson, their heirs and assigns, as tenants in common, all his right, title, interest, estate, property, claim and demand, in law or equity, of, in, and to all and every part of the said unsold lot now held in partnership as aforesaid, and the buildings and improvements thereon; and, also, the said 800 lots, his own separate and private property; and the said Robert Morris and John Nicholson, their heirs, executors or administrators, shall pay the said James Greenleaf, his executors, administrators or assigns, the price following, in manner following: that is to say; for the said James Greenleaf's one-third part of the lot held in partnership as aforesaid, supposed to be equal in value to 2,042 whole lots; and, also, for the said 800 lots, the private and separate property of the said James Greenleaf, at the rate of 160 dollars a lot, amounting to 454,720 dollars, and for the said James Greenleaf's proportion of the buildings and improvements on the partnership lots, 48,000 dollars; amounting in the whole to 502,720 dollars current money of the United States of America. The payment shall be made in negotiable notes of the said Robert Morris and John Nicholson: that is to say; one half in the notes of the said Robert Morris, and the other half in the notes of the said John Nicholson, for the aforesaid sum of 502,720 dollars, payable in four equal annual instalments, with interest at the rate of six per cent. a year from the date of these presents: that is to say; for 125,680 dollars, with interest as aforesaid, at the end of one year next ensuing the date of these presents; for the like sum of 125,680 dollars, with interest as aforesaid, at the end of two years next ensuing the date of these presents; the like sum of one hundred and twenty-five thousand six hundred and eighty dollars, with interest as aforesaid, at the end of three years next ensuing the date of these presents; and the like sum of 125,680 dollars, with interest as aforesaid, at the end of four years next ensuing the date of these presents; for the true and punctual payment of all which notes, with interest as aforesaid, the said Robert Morris, John Nicholson, their heirs, executors or administrators, shall give to the said James Greenleaf such good security by mortgage of real or other property, (to be approved of by two persons, one of whom is to be chosen by James Greenleaf, and the other by the said Robert Morris and John Nicholson; and if two such persons cannot agree as to the sufficiency of the security, they are to choose a third person, and a majority of the three shall determine it,) within one month from the date of these presents: Provided, always, and it is understood and agreed by these parties, that the said Robert Morris and John Nicholson shall assume upon themselves and pay all such sums of money as are due from the said James Greenleaf to the commissioners, or any other person or persons whatever, for or on account of the property hereby agreed to be sold; which

said sums, together with the amount of the said James Greenleaf's proportion of all notes given by the said Robert Morris and John Nicholson, or either of them, for lands not included in this agreement, in which the said James Greenleaf is interested with them, due after the first day of August next, and also four thousand dollars, the price of twenty-five lots to be retained by said James Greenleaf, as hereinafter mentioned, shall be deducted from the said amount of 502,720, and credited by endorsement on the said notes, or some of them, the amount of which endorsements shall be considered in the estimate of property to be given in security, so that the balance only shall be secured as aforesaid. And it is further agreed that the said Robert Morris and John Nicholson shall fully and perfectly indemnify, and save harmless, the said James Greenleaf, his heirs, executors, administrators, forever hereafter, against all suits, claims and demands, costs and charges, for or on account of any engagements heretofore entered into by the said James Greenleaf, either jointly with them, the said Robert Morris and John Nicholson, or separately from them, with the commissioners of the said city of Washington, or any other person or persons whatsoever, relative to improvements on buildings in the said city, so far as the same shall concern or relate to the property now agreed to be sold; all which engagements the said Robert Morris and John Nicholson shall, at their own expense, carry into full effect. And it is further agreed that the said James Greenleaf, his heirs or assigns, may select out of the whole lots now agreed to be sold, one square of 25 lots of 5,265 square feet each lot, or 25 lots of the same dimensions lying adjacent to each other, and on which no buildings are now erected, which the said Robert Morris and John Nicholson, or their heirs, shall convey to the said James Greenleaf, his heirs or assigns, by good and sufficient deeds of conveyance in fee simple, free from all claims of dower, and all other incumbrances, for which said James Greenleaf shall allow to the said Robert Morris and John Nicholson, at the rate of 160 dollars each lot, payable in four equal annual instalments, with legal interest from the date of these presents, and to be discounted as aforesaid. And it is further agreed that, upon the said Robert Morris and John Nicholson's giving their notes for the sums of money abovementioned, and upon their giving security by mortgage of real property, to be approved as abovementioned, the said James Greenleaf or his heirs, shall, by good and sufficient deed or deeds, containing a clause or clauses of general warranty as to the said 800 lots, his separate property, and of special warranty as to the remainder of the said property, and to be executed and acknowledged according to the law of Maryland, convey to the said Robert Morris and John Nicholson, their heirs and assigns, to be equally divided between them, as tenants in common, all his, the said James Greenleaf's right, title, interest, estate, property, claim and demand, both in law and equity, of, in, or to the said lots, lands, tenements and hereditaments, hereby agreed to be sold to them, with the appurtenances thereto belonging, and to the benefit of all writings and contracts relating to the same; subject, nevertheless, to the heirs now binding the said property on account of that part of the purchase money which remains unpaid to the said commissioners of the city of Washington, or other persons from whom the same was purchased, and all other heirs contained in the contract under which the same was purchased; and the said Robert Morris and John Nicholson covenant and agree that neither they, nor any persons claiming under them, shall ask for, or receive conveyances of, the legal estate of such the said property, as the said James Greenleaf has now only an equitable right in, only in proportion as they shall discharge the said

purchase money from time to time. And for the true performance of all matters or things contained in this agreement, the said James Greenleaf binds himself, his heirs, executors and administrators, unto the said Robert Morris and John Nicholson, their heirs, executors and administrators, and the said Robert Morris and John Nicholson, jointly and severally, bind themselves, their heirs, executors and administrators, to the said James Greenleaf, his heirs, executors and administrators, in the penalty of one million dollars current money of the United States. In witness whereof, the said parties to these presents have interchangeably set their hands and seals, on the day and year first above written.

JAMES GREENLEAF.
ROBERT MORRIS.
JOHN NICHOLSON.

Sealed and delivered in the presence of us:
JAMES DUNLOP.
JAMES TATE.

No. 2.

Deed from Greenleaf to Morris and Nicholson.

This indenture, made the 13th day of May, in the year of our Lord 1796, between James Greenleaf, late of the city of Amsterdam, in the United Netherlands, but now of the city of New York, in the State of New York, esquire, of the one part, and Robert Morris and John Nicholson, both of the city of Philadelphia, in the Commonwealth of Pennsylvania, esquires, of the other part, witnesseth, that the said James Greenleaf, in pursuance of certain articles of agreement, made between himself, of the one part, and the said Robert Morris and John Nicholson, of the other part, bearing date the tenth day of July last, as well as in consideration of 5 shillings, lawful money of the State of Maryland, to the said James Greenleaf in hand paid, by the said Robert Morris and John Nicholson, before the sealing and delivery of these presents, the receipt of which is hereby acknowledged, and for other good and valuable causes and considerations, hath granted, bargained, sold, aliened, enfeoffed, assigned released, and confirmed, and by these presents doth grant, bargain, sell, alien, enfeoff, assign, release and confirm, unto the said Robert Morris and John Nicholson, their heirs and assigns, as tenants in common, and not as joint tenants, except as in hereinafter excepted, all those hereinafter mentioned and described lots, squares, lands and tenements, situate in the city of Washington, in the territory of Columbia, wherein the said James Greenleaf, and the said Robert Morris, and the said John Nicholson, were jointly interested, each one equal undivided third part, on the day of the date of the abovementioned articles of agreement: that is to say; all those 3,000 lots, situate in the city of Washington aforesaid, which the said James Greenleaf contracted for with the commissioners of the said city, by articles of agreement bearing date on or about the 23d day of September, in the year of our Lord, 1793, as by the said articles, reference being thereunto had, will more fully appear; and also all those 3,000 lots, situate in the said city of Washington, for which the said Robert Morris contracted with the said commissioners, by articles of agreement bearing date on or about the 24th day of December, in the year of our Lord, 1793, as by the said articles, reference being thereunto had, will more fully appear; of which said 6,000 thousand lots, the commissioners of the said city of Washington have since conveyed about 2,857 lots, and 3.353 square feet

to the said James Greenleaf, in fee simple, by four certificates, three of them bearing date on or about the 9th day of July, in the year of our Lord 1794, and the other on or about the 18th day of October, in the same year, as by the said certificates, reference being thereunto had, will more fully appear; and also all those lots, situate in the city of Washington aforesaid, supposed to be about 220 in number, which the said James Greenleaf contracted for with a certain Daniel Carroll, of Duddington, by two several articles of agreement, one bearing date on or about the 26th day of September, in the year of our Lord 1793, the other bearing date on or about the 24th day of December, in the same year, as by the said articles of agreement, reference being thereunto had, will more fully appear; and also all those lots, supposed to be about 428½ in number, situate in the city of Washington aforesaid, for which the said James Greenleaf contracted with a certain Notley Young, by articles of agreement, bearing date on or about the 26th day of September, in the year of our Lord 1793, and which the said Notley Young afterwards conveyed to the said James Greenleaf, in fee simple, by deed bearing date on or about the 28th day of October, in the year of our Lord 1794, as by the said articles of agreement and deed, reference being thereunto had, will more fully appear; and also all those lots situate in the said city of Washington, supposed to be about 289¼ in number, for which the said James Greenleaf contracted with Uriah Forrest and Benjamin Stoddert, by an agreement in writing, bearing date on or about the fourteenth day of July, in the year of our Lord 1794, and which the said Uriah Forrest and Benjamin Stoddert, and William Deakins, junior, afterwards conveyed to the said James Greenleaf, in fee simple, by three deeds, one of the said deeds, from the said Uriah Forrest and Benjamin Stoddert, bearing date on or about the 20th day of September, in the year last aforesaid, one other of the said deeds from the said Benjamin Stoddert and William Deakins, bearing date the same day and year, the other of the said deed from the said William Deakins, bearing date the same day and year, as by the said agreemeent and deeds, reference being thereunto had, will more fully appear; also, all those lots situate in the said city of Washington, supposed to be about 108 in number, for which the aforesaid John Nicholson contracted with a certain William King, by an agreement in writing, bearing date on or about the 14th day of July, in the year of our Lord 1794, as by the said agreement, reference being thereunto had, will more fully appear; and also all those lots situate in the said city of Washington, supposed to be about 79½ in number, for which the said James Greenleaf contracted with William Bayly, by an agreement in writing, bearing date on or about the 15th day of July, in the year of our Lord 1794, as by the said agreement, reference being thereunto had, will more fully appear; and also all those lots situate in the city of Washington aforesaid, supposed to be about 40 in number, for which the said James Greenleaf contracted with Peter Casanave and George French, by an agreement in writing, made some time in the month of September, in the year of our Lord 1793, as by the said agreement, reference being thereunto had, will more fully appear; and also all those hereinafter described lands, squares, lots and tenements, situate in the city of Washington aforesaid, which were purchased by the said James Greenleaf in his private right, the said Robert Morris and John Nicholson being no way interested or concerned therein: that is to say; all that land supposed to amount to about the quantity of 60 acres, more or less, which the said James Greenleaf contracted for with William Deakins, the younger,

by an agreement in writing, bearing date on or about the 14th day of July, in the year of our Lord 1794, being land purchased by said Deakins from Henry Hardy, lying on the northwest side of the President's house and on the northeast side of Georgetown, and which the said William Deakins, by deed duly executed, hath since conveyed to the said James Greenleaf, in fee simple, as by the said written agreement and deed, reference being thereunto had, will more fully appear; and also all that land supposed to amount to about the quantity of 316 acres, be the same more or less, of which about 206 acres are called and known by the name of the gleanings, and 110 acres by the name of Gordon's meadows, lying adjoining each other on the northwest side of the capitol and the northeast side of the President's house, for all which the said James Greenleaf contracted with Benjamin Oden, by an agreement in writing, bearing date on or about the 14th day of July, in the year of our Lord 1794, and of which the said Robert Morris and John Nicholson will, by virtue of this indenture, be entitled to a conveyance from the said Benjamin Oden, in fee simple, on their paying the balance of the purchase money due thereon, and complying with the terms of the said agreement in writing, which, by the said agreement, reference being thereto had, will more fully appear; excepting, nevertheless, out of the lots, squares, lands and tenements abovementioned, all that square marked and distinguished on the plat of the said city of Washington by the number 506, all that other square lying next to and south of the said number 506, and all that other square lying next to and south of the square last aforesaid; the said three squares containing, in the whole, about the quantity of 169,576$\frac{4}{10}$ square feet, be the same more or less, which, it is agreed by all the parties to these presents, shall be and remain the sole and separate property of the said James Greenleaf, his heirs and assigns; and excepting, also, all such squares, lots, lands or tenements, as were either conveyed or sold, or agreed to be conveyed, either by all or either of them the said James Greenleaf, Robert Morris and John Nicholson, or any of their agents or attorneys, to any person or persons whatsoever, at any time prior the said 10th day of July, in the year of our Lord 1795; together with all and singular the houses, buildings, improvement, ways, waters, water-courses, rights, priviliges, services, hereditaments and appurtenances, of what nature or kind soever, to the hereby conveyed lots, squares, lands and tenements, belonging or in any manner appertaining, and all deeds, writings and papers, touching or concerning the title to the same, and also the reversion and reversions, remainder and remainders, rents, issues and profits, of all and singular the hereby conveyed lots, lands, tenements and premises, and also all the estate, right, title, interest, property, claim and demand, both at law and in equity, of him the said James Greenleaf, of, in, or to the same, and every part thereof. To have and to hold all and singular the hereby conveyed lots, squares, lands and premises, with the appurtenances, to the said Robert Morris and John Nicholson, their heirs and assigns, to the only proper use and behoof of the said Robert Morris and John Nicholson, their heirs and assigns forever, equally to be divided between them, as tenants in common, and not as joint tenants; subject, neverthless, to all liens now binding or affecting the same property on account of any part of the purchase money which remains unpaid to the commissioners of the said city of Washington, or any other person or persons from whom the same was purchased by either of the parties to these presents, and to all other liens, restrictions, reservations, exceptions, conditions, regulations, and agreements

to which the said property, or any part of it, was subjected by the contract under which the same was purchased as aforesaid; subject, also, to a conveyance (absolute in form, but intended to be in nature of a mortgage) made by the said James Greenleaf, of part of the premises, to Peter Godefroy Rutger, Jan Schimmelpennick and Robert Daniel Crommelin, as by the deed bearing date on or about the 28th day of July, in the year of our Lord 1794, reference being thereunto had, will more fully appear; subject also to a mortgage of part of the premises made by the said James Greenleaf, Robert Morris, and John Nicholson, to a certain William Mayne Duncanson, as by the deed bearing date on or about the 12th day of September, in the year of our Lord 1795, reference being thereunto had, will more fully appear; and subject to another mortgage of part of the said premises, made by the said James Greenleaf, Robert Morris, and John Nicholson, to a certain Thomas Law, as by the deed bearing date on or about the 11th day of May, in the year of our Lord 1795, reference being thereunto had, will more fully appear. And the said James Greenleaf, for himself, his heirs, executors, and administrators, hereby covenants with the said Robert Morris and John Nicholson, their heirs and assigns, in manner following; that is to say: that he, the said James Greenleaf and his heirs, all that part of the hereby conveyed lots, squares, lands and premises, in which he, the said James Greenleaf, and the said Robert Morris and John Nicholson, were jointly interested, each one equal undivided third part, on the said tenth day of July, in the year of our Lord 1795, as aforesaid, from and against him the said James Greenleaf, and his heirs, and all persons lawfully claiming by, from, or under him or them, to them, the said Robert Morris and John Nicholson, their heirs and assigns, shall and will warrant and forever defend; and that he the said James Greenleaf, and his heirs, all the residue of the said hereby conveyed lots, squares, lands, and premises, to them the said Robert Morris and John Nicholson, and their heirs and assigns, from and against all persons whatever lawfully claiming or to claim the same, shall and will warrant and forever defend: provided, nevertheless that this warranty shall not be construed to oblige the said James Greanleaf, or his heirs, to warrant or defend any part of the premises against any lien, restriction, reservation, exception, regulation, condition, agreement, conveyance, or mortgage, to which the said premises are herein beforementioned to be subject; and further, that he, the said James Greenleaf, and his heirs, and all persons lawfully claiming under him or them, shall and will, at any and all time and times hereafter, at the reasonable request, and at the proper cost and charges in the law, of the said Robert Morris and John Nicholson, their heirs or assigns, make, do, execute and suffer, or cause to be made, done, executed, and suffered, all such further and other act and acts, deed and deeds, recovery and recoveries, thing and things, conveyance and conveyances, assurance and assurances, acknowledgment and acknowledgments, for the more perfect assurance and conveyance of the hereby conveyed, or intended to be conveyed, lots, squares, lands, and premises, with the appurtenances, to the said Robert Morris and John Nicholson, their heirs and assigns, as tenants in common, and not as joint tenants, according to the true intent and meaning of this indenture, as shall be by the said Robert Morris and John Nicholson, their heirs or assigns, or their learned counsel, devised, advised, or required. And this indenture further witnesseth, that the said James Greenleaf hath constituted and appointed, and he doth hereby constitute and appoint, William Deakins, junior, of Georgetown, in Maryland,

and William Cranch, of the city of Washington aforesaid, jointly and severally, his attorney and attorneys, with full power to them or either of them to appear before any court, judge, justice or justices, or any other person or persons in the State of Maryland having legal authority to take the acknowledgment of this indenture, and to acknowledge the said indenture for and in the name of the said James Greenleaf, and as his act and deed, in order that the same may be recorded agreeably to law. In witness whereof, the said parties to these presents have hereunto interchangeably set their hands and seals. Dated the day and year first above written.

JAMES GREENLEAF. [SEAL.]

Sealed and delivered in the presence of—
JOSEPH KARRICK.
ISAAC POLOCK.
GEORGE A. BAKER.

I acknowledge to have received full satisfaction for the above conveyed premises. Witness my hand,

JAMES GREENLEAF.

Witness present at signing:
ISAAC POLOCK.
JOSEPH KARRICK.
GEORGE A. BAKER.

On the back of which deed was this endorsed:

STATE OF MARYLAND, *Prince George's county, sct.*

On the 30th day of August, in the year of our Lord 1796, before us, Cornelius Cunningham and Robert Brent, two of the justices of the county aforesaid, personally appeared Isaac Polock, one of the witnesses to the within written indenture, and made oath on the Holy Evangelists that he saw the within named James Greenleaf sign, seal, and deliver the said indenture as his act and deed on the day of the date thereof; that he, this deponent, subscribed his name as a witness thereto; and that he saw Joseph Karrick and George A. Baker, the other subscribing witnesses, also subscribe their names as witnesses thereto. Sworn before us: witness our hands, the day and year aforesaid.

CORNELIUS CUNNINGHAM.
ROBERT BRENT.

STATE OF MARYLAND, *Prince George's county, sct.*

Be it remembered that, on the 30th day of August, in the year of our Lord 1796, before us, Cornelius Cunningham and Robert Brent, two of the justices of the State and county aforesaid, personally appeared William Cranch, and, by virtue of the power of attorney contained in the within written indenture, acknowledged the said indenture for and in the name of, and as the act and deed of the within named James Greenleaf, in order that the same may be recorded according to law.

CORNELIUS CUNNINGHAM.
ROBERT BRENT.

STATE OF MARYLAND, *Territory of Columbia:*

I do hereby certify that the aforegoing is a true copy from liber B, No. 2, folio 532, 533, 534, 535, 536, one of the land record books for that part of the Territory of Columbia which lies within the State of Maryland. In testimony whereof, I have hereunto set my hand, and affixed the seal of my office, this 1st day of June, A. D. 1797.

[L. S.] JOHN M. GANTT, *Clerk.*

Recorded 30th day of August, 1796.

No. 3.

Deed from Morris and Nicholson to Duncanson, Deakins, and Forrest.

This indenture, made this twenty-sixth day of October, in the year seventeen hundred and ninety-six, between Robert Morris and John Nicholson, of the city of Philadelphia, of the one part, and William M. Duncanson, William Deakins, jr., and Uriah Forrest, of the Territory of Columbia, of the other part, witnesseth: that the same Robert Morris and John Nicholson, for and in consideration of the sum of fifty thousand dollars to them in hand paid before the sealing and delivery of these presents, the receipt whereof they do hereby acknowledge, have given, granted, bargained, sold, released, enfeoffed, conveyed, and confirmed, and by these presents do give, grant, bargain, sell, release, enfeoff, convey, and confirm, unto the same William M. Duncanson, William Deakins, jr., and Uriah Forrest, their heirs and assigns forever, all and singular the following squares in the City of Washington, to wit: squares No. 32, 42, 43, 44, 47, 48, 49, 50, 55, 66, 67, 68, 69, 70, 73, 74, 75, 76, 77, 78, 79, 101, 118, 102, 105, 118, 119, 120 and 141, and all the property, legal or equitable, of them the same Morris and Nicholson, or either of them, in all and every of the following squares, to wit: square No. 62, 56, 84, 102, 87, square east of square 87, square south of square 104, square north of 81, square No. 88, 89, 104, 124, 125, square east of square No. 88, square north of square 128, square No. 120, 61, 166, 80, 103, estimated to contain one million sixty thousand three hundred and eighty-four square feet, and supposed to be worth, at the lowest valuation, two hundred and twelve thousand and sixty-eight dollars; excepting, however, such part of the said squares, and all and every of them, as may have been heretofore sold by James Greenleaf, or by them, the same Morris and Nicholson—to have and to hold all and singular the before-mentioned several squares, and all the right, title, interest, and estate of them the said Robert Morris and John Nicholson, or either of them, in law or equity, to the said several squares, or any or either of them, to them the same William M Duncanson, William Deakins, jr., and Uriah Forrest, their heirs and assigns for ever, as tenants in common, and not as joint tenants, to their whole and sole benefit, use, and behoof, and to and for no other use, intent, or purpose whatever. In testimony whereof, the same Robert Morris and John Nicholson have hereunto respectively set their hands and affixed their seals, this day and year aforesaid.

ROBERT MORRIS. [SEAL]
JNO. NICHOLSON. [SEAL.]

Signed, sealed, and delivered, in the presence of—
ISAAC POLLOCK.
GUST'S SCOTT.

On the back of which was thus endorsed, to wit:

October 26, 1796: Received of Wm. M. Duncanson, Wm. Deakins, jr., and Uriah Forrest, the sum of fifty thousand dollars, it being the full consideration in the within deed expressed.

ROB'T MORRIS.
JNO. NICHOLSON.

Teste: ISAAC POLLOCK.

MARYLAND, TERRITORY OF COLUMBIA, *to wit:*

Be it remembered that, on the twenty-sixth day of October, in the year seventeen hundred and ninety-six, personally appeared before me, the subscriber, one of the commissioners appointed in virtue of the act of Congress for establishing the temporary and permanent seat of the Government of the United States, the within mentioned Robert Morris and John Nicholson, and acknowledged the within instrument of writing to be their act and deed, and the act and deed of each of them, and the lands and premises therein mentioned to be the right, title, interest, and estate of the within named William M. Duncanson, William Deakins, jr., and Uriah Forrest, their heirs and assigns for ever, agreeably to the true intent and meaning of the within deed, according to the several acts of Assembly in such case provided.

GUST'S SCOTT.

Recorded 26th day of October, 1796.
Copy. Teste: WM. BRENT, *Clerk.*

No. 4.

Deed—Duncanson to Deakins and Forrest.

This indenture made this 16th day of August, in the year one thousand seven hundred and ninety-seven, between William Maine Duncanson, of the City of Washington, and Territory of Columbia, of the one part, and William Deakins, junior, and Uriah Forrest, of Georgetown, in the Territory aforesaid, of the other part, witnesseth: that the said William M. Duncanson, for and in consideration of the sum of five shillings, current money of Maryland to him in hand paid by the said William Deakins, junior, and Uriah Forrest, the receipt whereof is hereby acknowledged, hath granted, bargained and sold, aliened, assigned, transferred and released, and by these presents doth grant, bargain, and sell, alien, assign, transfer, and release to them, the said William Deakins, junior, and Uriah Forrest, the one undivided third part of all and singular the following squares in the City of Washington aforesaid; that is to say: No. 32, 42, 43, 44, 47, 48, 49, 50, 55, 66, 67, 68, 69, 70, 73, 74, 75, 76, 77, 78, 79, 101, 102, 105, 118, 119, 120, and 141, and also squares No. 52, 56, 84, 102, 87, square east of square 87, square south of square 104, square north of square 81, squares No. 88, 89, 104, 124, 125, 120, 61, 166, 8[illegible] and 103, square east of square 88, and square north of square 128, estimated to contain one million sixty thousand three hundred and eighty-four square feet, together with all the interest, claim, property and right, either in law or in equity, which the said William M. Duncanson hath in and to the squares above enumerated, or any of them, or any part thereof, to have and to hold the said William M. Duncanson's undivided third part, and all the interest, claim, property, either in law or in equity, of him the said Wil-

liam M. Duncanson, of, in, and to the above-recited squares, and each and every of them, with all and singular the appurtenances thereunto belonging, unto them the said William Deakins, junior, and Uriah Forrest, their heirs and assigns for ever, as tenants in common, and not as joint tenants. In testimony whereof, the said William M. Duncanson hath to these presents set his hand, and affixed his seal, the day and year first above written.

W. M. DUNCANSON. [SEAL.]

Signed, sealed, and delivered, in the presence of—

GUST'S SCOTT.

On the back of which deed was this written, to wit:

STATE OF MARYLAND, *Territory of Columbia:*

This day William Maine Duncanson, the grantor within named, personally appeared before me, the subscriber, one of the commissioners of the Federal City, and acknowledged the within and aforegoing indenture to be his act and deed. Given under my hand, this 16th day of August, in the year one thousand seven hundred and ninety-seven.

GUST'S SCOTT.

Recorded the 24th day of August, 1797.

True copy. Teste: WILLIAM BRENT, *Clk.*

No. 5.

Wm. Deakins's will.

I, William Deakins, junior, of Georgetown, merchant, being at this time in a weak state of health, but of perfect mind and disposing memory, do make and ordain this my last will and testament. *Imprimis.* As a mark of the great affection which I entertain for my beloved wife, Jane Deakins, and as the best compensation which I can now make to her for her tender affection towards me since our intermarriage, and the great assistance which she has given to me by her care and attention in the *aquition* of the property which I now possess, I give and bequeath to her, my said wife Jane, and her heirs for ever, the three *lotts* upon which we now dwell in Georgetown, together with all the houses, buildings, improvements, and appurtenances thereupon being, and thereunto belonging; also, that house and lot in Georgetown whereupon James Clarke now lives, my tract of land at or near the mouth of Seneca creek, in the county of Montgomery, the one called Seneca Landing, the other called Fortune, supposed to contain upwards of one hundred and fifty acres, be the same more or less; all which I give to my wife and her heirs for ever. *Item.* I give to my said wife, and to her assigns for ever, all my negroes, slaves, and servants, all my plate, household furniture, kitchen furniture, my carriage, and my horses. *Item.* My lands and other real estate being, or a great part thereof, being taken up and held together with my brother Francis Deakins, and being desirous that the same shall be so conducted as to make it most profitable to my estate hereafter, I hereby give and devise the whole of my estate, both real and personal, not hereinbefore devised, to my brother Francis Deakins, and his heirs for ever, for the uses and purposes of this my will hereinafter expressed. And, first, I devise, and my will and meaning is, that my said brother Francis pay to *by* beloved wife Jane, annually, and every year, for five years after my decease, the sum of two hundred pounds current money; and, se-

condly, whereas I hold a great deal of property in trust for others, and hold other property to which others now are, or, upon doing certain acts, may be entitled, in all such cases, and in all other cases, except as to the property devised to my wife, my will is, and I do hereby devise and place my brother Francis in my place, and do hereby entirely authorize and empower him, in his own discretion, and upon being himself satisfied as to the propriety of the act, to do all such things, act or acts, make all such conveyance and conveyances, as I myself might do, or, in his opinion, ought to do, were I *living*, without being answerable, either in law or equity, to any person *to any person* whatever, for what he *my* so do—requesting of him, as I am sure he will do, that he will be attentive to my reputation in the execution of the trust. *Item.* My will is, that all my just debts be paid, in the first place, out of the property so devised as aforesaid to my brother Francis; and, in the manner of paying those debts, my will is, and I so direct, that all my bank *engagments* be first paid and discharged, so as, in the first place, to exonerate and indemnify all and every person whatsoever, who may in any manner be answerable for me on account of their endorsements upon my bank paper, or on account of any engagements they may have entered into for me with any bank; and, secondly, I do direct that all debts due from me wherein others stand bound for me as security, or as endorsers, or in any other way, be paid off and discharged, so as to exonerate and indemnify any and every person whatever who stand in any manner bound for me; and, lastly, that all other just debts due from me be paid off and discharged as soon as can be; and, to enable my executor hereinafter named to fulfil this my will, I hereby authorize and empower him to sell all or any part of my estate hereinbefore devised to him for cash, or upon credit, as he shall think proper, without being in any manner responsible for any insolvencies or losses which may happen upon such his sales. *Item.* At the expiration of seven years after my death, the property so devised as herein before mentioned to my brother Francis, be divided among my brothers as follows, after all my debts are paid: first, on account of the great trouble which he will have in the execution of this my will, I give to my brother Francis Deakins, and his heirs forever, one-half of the said estate; the residue I devise to my brothers Leonard Marbury Deakins, Paul Hoy, and their heirs for ever, equally to be divided between them as tenants in common, and not as *as* joint tenants. And, lastly, I hereby constitute and appoint my said brother Francis Deakins whole and sole executor of this my last will and testament, hereby revoking all others. Given under my hand and seal this second day of March, one thousand seven hundred and ninety-eight.

WILLIAM DEAKINS, jr. [SEAL.]

Signed, sealed, and delivered, in the presence of—
BENJAMIN STODDART.
CHARLES WORTHINGTON.
JOHN WEEMS.
JOHN THOMPSON MASON.

MONTGOMERY COUNTY, *sct.*

On the 12th day of March, 1798, came Benjamin Stoddart, Charles Worthington, John Weems, and John T. Mason, the four subscribing witnesses to the within last will and testament of William Deakins, jr., late of said county, deceased, and severally made oath on the Holy Evangels of Almighty

God, that they did see the testator therein named sign and seal this will, and that they heard him publish, pronounce, and declare the same to be his last will and testament; that, at the time of so doing, he was, to the best of their apprehension, of sound and disposing mind, memory, and understanding, and that they respectively subscribed their names as witnesses to this will in the presence, and at the request of the testator, and in the presence of each other. Certified by

SAMUEL TURNER, sr., *Reg'r.*

In testimony that the aforegoing is a true copy from the original will of William Deakins, jr, recorded in one of the records for Montgomery county orphans' court, I have hereunto set my hand, and affixed the seal of my office, this 27th day of December, one thousand eight hundred and four.

[SEAL.] Teste: SAMUEL TURNER, sr.,
Reg. of Wills for Montgomery.

STATE OF MARYLAND, *Montgomery county, to wit:—To all to whom these presents shall come, greeting:*

Know ye, that, on the twelfth day of March, one thousand seven hundred and ninety-eight, before Samuel Turner, sr., register of wills for Montgomery county, in the State aforesaid, duly commissioned and qualified according to law, the last will and testament of William Deakins, jr., late of said county, deceased, was, in common form of law, proved, approved, and exhibited, a copy whereof is hereunto annexed; and that, on the same day and year aforesaid, letters testamentary of all and singular the goods, chattels, rights, and credits, which were of the said deceased, or in any manner or way concerning his said testament, was granted unto Francis Deakins, the executor in and by the said will *will* named and appointed, he having first entered into bond for the due performance thereof according to law. Witness, Honore Martin, esq., chief justice of our orphans' court. In testimony, I have hereunto set my hand, and affixed the seal of my office, this 27th day of December, 1804.

[SEAL.] Teste: SAMUEL TURNER, sr,
Reg. for Montgomery.

DISTRICT OF COLUMBIA, *Washington County,* } *to wit:*

I certify that the aforegoing last will and testament of William Deakins, deceased, is a true copy from the copy filed and recorded in my office. Witness my hand and seal of office, this 5th day of November, in the year 1832.

[SEAL.] HENRY C. NEALE, *Reg. Wills.*

No. 6.

Deed: F. Deakins to Forrest.

At the request of Uriah Forrest, the following deed was recorded the 31st day of May, 1802.

This indenture made this thirty-first day of May, in the year one thousand eight hundred and two, between Francis Deakins and Uriah Forrest, both of Washington county, and District of Columbia, wit-

nesseth: that the said Francis Deakins, for and in consideration of the sum of one dollar to him in hand paid by the said Uriah Forrest, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, conveyed, and confirmed, and by these presents doth grant, bargain, sell, convey, and confirm, unto the said Uriah Forrest, his heirs and assigns, for ever, all the said Francis Deakins's right, title, interest and claim, acquired by the devise of William Deakins, jr., deceased, or otherwise, of, in, and to the following lots in the City of Washington, to wit: lots numbered one, two, sixteen, seventeen, eighteen, nineteen, and twenty, in square numbered seventy-five: and lots numbered seven, eight, nine, and ten, in square numbered one hundred and nineteen; to have and to hold the above described eleven lots to the said Uriah Forrest, his heirs and assigns, for ever. In testimony whereof, the said Francis Deakins hath hereunto set his hand and affixed his seal, the day and year above written.

FRANCIS DEAKINS. [SEAL.]

Signed, sealed, and delivered, in presence of
WILLIAM THORNTON.

May 31, 1802. Received of Uriah Forrest one dollar, the consideration within mentioned.

FRANCIS DEAKINS.

Witness: W. THORNTON.

DISTRICT OF COLUMBIA, *Washington County*, } *to wit:*

Came Francis Deakins, party to the within deed, before me, one of the commissioners of the city of Washington, and acknowledged the within instrument of writing to be his act and deed, and the lots therein mentioned to be the right, title, and estate of him, the said Uriah Forrest, his heirs and assigns, for ever. Taken and acknowledged the thirty first day of May, 1802.

WILLIAM THORNTON.

True copy. Teste: WILLIAM BRENT, *Clerk.*

No. 7.

Agreement—Forrest to Shaw and Brith.

We agree to convey to John Shaw and James Birth, their heirs or assigns, the lots number sixteen and seventeen, in square number seventy five, in the City of Washington, assuring it against our heirs, and all persons claiming under us, on their paying two notes of this date, each for four hundred and fifty dollars two cents, bearing interest from and since the first day of September last passed—one payable the first of September next, and the other the first of September, eighteen hundred and one. Witness our hands and seals, this sixteenth day of October, seventeen hundred and ninety-nine.

URIAH FORREST. [SEAL.]

Witness: JOSEPH FORREST, for U. Forrest.

Endorsement.

Agreement partly cancelled.

On the 18th January, 1802, the bargain, as it related to lot No. 16, was cancelled by consent of parties, the notes given for both lots given up, and a new note given for lot No. 17, which, when paid, deed is to be made agreeably to the original contract.

URIAH FORREST.

Note.

$352 $\frac{50}{100}$.

WASHINGTON, *January* 18, 1802.

Shaw & Birth's note. Sixty days after date, we promise to pay to Uriah Forrest, or order, three hundred and fifty-two dollars fifty cents, negotiable at the Bank of Columbia: value received.

SHAW & BIRTH.

Endorsed: URIAH FORREST.

No. 8.

(Recorded in liber S, No. 18, page 333 and 334.)

Deed: John Hewitt, ass'nee of U. Forrest, to Shaw and Birth.

This indenture, made this twenty-third day of November, in the year one thousand eight hundred and seven, between John Hewitt, as assignee of the estate and effects of Uriah Forrest, a bankrupt, and of the City of Washington, in the District of Columbia, of the one part, and John Shaw and James Birth, both of the same place, of the other part. Whereas by certain articles of agreement, or a memorandum in writing, on or about the sixteenth day of October, in the year seventeen hundred and ninety-nine, the said Uriah Forrest, in consideration of the sum of four hundred and twenty eight and fifty five cents, to be paid as therein mentioned, did sell and agree to convey to them, the said John Shaw and James Birth, their heirs or assigns, in fee simple, all his right in that lot or portion of ground which, on the plan or survey of the said City of Washington, is known and designated as lot numbered seventeen, (17) in square number seventy five, (75 ; and whereas the said sum of four hundred and twenty-eight and fifty-five cents has been fully paid and satisfied to the said Uriah Forrest, who since having become bankrupt within the meaning and intent of the act of Congress, entitled "An act to establish an uniform system of bankruptcy throughout the United States," the said John Hewitt was duly chosen and appointed by his creditors the assignee of his estate and effects, and the commissioners of bankruptcy, accordingly, made a deed or conveyance to the said John Hewit, his heirs, executors, administrators, and assigns, of all the estate and effects, of every nature, of the said Uriah Forrest; and the said Uriah Forrest having never made a conveyance or deed of the lot aforesaid, in pursuance of such agreement as aforesaid; now, therefore, this indenture witnesseth that the said John Hewitt, in consideration of the premises, and also of one dollar current money to him in hand paid by the said John Shaw and James Birth at or before the sealing and delivery of these presents, the receipt of which he hereby acknowledges, hath granted, bargained and sold, aliened, conveyed, assigned, transferred, released, enfeoffed, and confirmed, and by these presents doth grant, bargain and sell, alien, convey, assign, transfer, release, enfeoff, and confirm, unto them the said John Shaw and James Birth, their heirs and assigns for ever, as tenants in common, and not as joint tenants, all the right, title, and interest, property, estate and demand, both at law and in equity, of him the said Uriah Forrest, and of the said John Hewitt, and each of them, in, of, and to the aforesaid lot number seventeen, in square number seventy-five, in the City of Washington aforesaid, with its rights, improvements, privileges, and appurtenances; to have and to hold the same, with its rights, improvements,

privileges, and appurtenances as aforesaid, to them the said John Shaw and James Birth, their heirs and assigns, as tenants in common, and not as joint tenants, to the only proper use and behoof of the said John Shaw and James Birth, their heirs and assigns, for ever—no other. In witness whereof, the said John Hewitt hath hereunto set his hand and affixed his seal, on the day and year first above written.

JOHN HEWITT. [SEAL.]

Signed, sealed, and delivered, in the presence of
THOMAS MUNROE.

DISTRICT OF COLUMBIA, *Washington county:*

Be it remembered that, on this 23d day of November, in the year one thousand eight hundred and seven, before the undersigned, superintendent of the City of Washington, personally appeared John Hewitt, the party grantor in the within and aforegoing indenture or instrument of writing, named and acknowledged the said indenture to be his act and deed, delivered for the purposes therein expressed, and the lot and premises therein mentioned to be the right and estate of the therein named Shaw & Birth, their heirs and assigns, for ever. Taken and acknowledged before, and certified by,

THOMAS MUNROE.

True copy. Teste: WM. BRENT, *Clerk.*

No. 9.

Deed: T. Sandiford, trustee, to J. Birth.

This indenture, made this seventh day of August, in the year of our Lord one thousand eight hundred and twenty-eight, between Thomas Sandiford, trustee for the purposes hereinafter mentioned, of the one part, and James Birth, of the other part, both of Washington county, in the District of Columbia. Whereas, in a cause depending in the Circuit Court of the District of Columbia for the county of Washington, sitting as a court of chancery, wherein James Birth and others were complainants, and John, Robert, and Richard Shaw, were defendants, it was ordered by the said court, on or about the thirteenth day of January, one thousand eight hundred and twenty-seven, and decreed, that the pieces or portions of ground and premises, with the improvements thereon, hereinafter mentioned, should be sold; and the said Thomas Sandiford was by the said decree appointed trustee for the purpose of making said sale; and the said trustee did, in pursuance of the directions of the said decree, on the fifteenth day of May, eighteen hundred and twenty-seven, set up and expose to sale the hereinafter mentioned pieces or portions of ground and premises, when the said James Birth, being the highest bidder, became the purchaser at and for the sum of twenty-seven hundred thirty-one dollars and seventy-five cents, which hath been fully paid to the said trustee; and the said court did, at December term, eighteen hundred and twenty-seven, finally ratify and confirm the said sale, all which will more fully and at large appear, reference being had to the record of the proceedings of the said court: This indenture, therefore, witnesseth that the said Thomas Sandiford, trustee as aforesaid, in consideration of the said sum of twenty seven hundred thirty-one dollars and seventy-five cents to him in hand paid by the said James Birth before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath given, granted,

bargained, and sold, and by these presents doth give, grant, bargain, and sell, unto the said Jas. Birth, his heirs and assigns, for ever, all the right, title, claim, and interest of the complainants and of the defendants herein before mentioned, of, in, and to lot number seventeen, in square seventy-five, lot number eleven in square number one, part of lot number ten in square number one, part of lot on Jefferson street, Georgetown, lot number thirteen in square number one, lot number three in square nine hundred and forty, lots numbered eighteen, nineteen, and twenty, in square nine hundred and sixty four, lot number one in square nine hundred and sixty-five, lots numbered three and four in square eleven hundred and nine, and lot number twelve in square number one, (all of which lying and being in the city of Washington, except the part of a lot on Jefferson street, in Georget own) together with the buildings and improvements, rights, privileges, and appurtenances thereto belonging, or in anywise appertaining: to have and to hold the said pieces, portions, or lots of ground and premises, with the appurtenances, unto him the said James Birth, his heirs and assigns, for ever, to his and their own proper use, benefit, and behoof. In witness whereof, the said Thomas Sandiford, trustee as aforesaid, hath hereto subscribed his name, and affixed his seal, the day and year first within written.

THOS. SANDIFORD. [SEAL.]

Signed, sealed, and delivered, in the presence of
WILLIAM WATERS.
R. S. BRISCOE.

DISTRICT OF COLUMBIA, *county of Washington, sct.*

On this seventh day of August, A. D. 1828, personally appeared before the subscribers, two of the justsces of the peace in and for the county aforesaid, Thomas Sandiford, and acknowledged the aforegoing instrument of writing to be his act and deed for the purposes therein mentioned

WILLIAM WATERS, *J. Peace.*
R. S. BRISCOE, *J. Peace.*

No. 10.

Letter from Forrest to Cranch.

SIR: Since selling to Jonathan Johnson lot No. 1, in square 75, in the City of Washington, for 256 d. 50 cents, lot No. 2 for 333 93 cents, and lot No. 20 for 433 8 cents; and to Elisha Lanham, in the same square, lot No. 18 for 412 92 cents, and lot No. 19 for 392 38 cents; and to Shaw & Birth, in the same square, lot No 16 for 470 99 cents, and lot No. 17 for 428 55 cents; I am informed that you lay claim to them as a part of the estate of Mr. James Greenleaf, to which you are trustee, from an impression they were never conveyed by Mr. Greenleaf to Morris & Nicholson. I am advised, and believe that I have an unquestionable good title; but, as the purchasers wish to improve, and do not like disputed titles, and as it will probably prevent building, I would propose that, in case the property should belong to, or by any means revert to the estate of Mr. Greenleaf, to agree to the sale, and to complete the title so far as the question may be decided in your favor, on receiving the sums of money for which the lots have respectively sold (it is proper to say, they have been sold on a credit of one and two years, from 1st Sept.,

1799, on interest); and that the notes, or the money, if received, shall be held to the use of those in whose favor the same shall be determined.

I am, sir, very respectfully,
Your obed't serv't,
URIAH FORREST.

Mr. WM. CRANCH.

No. 11.

GEORGETOWN, *November* 2, 1799.

URIAH FORREST, Esq.

Letter from Cranch to Forrest.

SIR: I have received your letter of yesterday, informing me of your having sold certain lots in the City of Washington belonging to the estate of Mr. James Greenleaf, and proposing that if, on investigation, the title should prove to be in me as Mr. Greenleaf's trustee, I should confirm those sales on receiving the money for which you have sold the said lots. As I do not know how far my authority, as trustee, enables me to make contracts respecting Mr. Greenleaf's property without an order from the court of chancery, I can consent only (upon your lodging in chancery the notes which you have taken for the lots in question, subject to the order and decree of the chancellor as to the disposal of them, or of the money which will become payable upon them,) to make such confirmation of those sales as the chancellor may direct; and I will throw no obstacle in the way of obtaining as speedy a decision of the business as may be consistent with a fair investigation, and with my duty as trustee.

I am, respectfully, sir,
Your obedient servant,
W. CRANCH.

Plaintiff's second bill of exceptions.

Plaintiff's second bill of exceptions.

The plaintiff, in addition to the evidence on his part, stated in the foregoing bill of exceptions, offered to prove the contents of a written contract, under the hands and seals of the parties, between Morris, Nicholson, and Greenleaf, on the one part, and Walter Stewart, of Philadelphia, on the 19th February, 1795, whereby the said Morris and Nicholson bargained and sold or contracted and covenanted to bargain and sell, and convey, to said Stewart, on the 1st day of June thereafter, certain lots in the city of Washington, and, among others, the lot now in controversy, for a valuable consideration in money, which said Stewart, by the same instrument, covenanted to pay to the said vendors. And, in order to lay a foundation for the admission of secondary evidence of the contents of said instrument, and to account for the non-production of the original, the plaintiff produced, and read in evidence to the court, the deposition of Walter C. Livingstone, prout the same annexed B.; the affidavit of the plaintiff himself, sworn to here, in open court, prout the same hereto annexed C.; and also the evidence of William Cranch, that, in the year 1795, he being then agent of Morris, Nicholson, and Greenleaf, the said original contract was, as he believes, placed in his hands by said Greenleaf; and he believes it, because he has a strong impression that he saw the original signatures of the parties, with the hand-writing of some of whom he was acquainted; but

thinks he was not at that time acquainted with the hand-writing of said Walter Stewart, but became acquainted with it afterwards; and because the said Greenleaf was in Washington, where this witness then resided, on or about the 1st of June, 1795, and it was his general custom to leave with this witness all his original contracts for the sale of lots in Washington, but whether he did actually see or have possession of the said original contract, he does not now recollect, but that, if he had the original, he has no doubt that he compared it with a copy which he had previously made in a book in which he generally entered copies of all such contracts; that copy having been originally made in the year 1795, as early as June, from a copy previously sent to him by Mr. Greenleaf from Philadelphia, and which copy, he believes, was delivered to Mr Nicholson, at his request, in the fall of the year 1796, with other papers; and that if the said original contract were so placed in his hands, he sent it, some time in 1796, to said John Nicholson, with various other contracts and papers, at said Nicholson's request. And the plaintiff also read to the court the papers among the proceedings in this cause, showing what steps he had taken to compel the production, by the said Stewart's representative, of the part of said contract delivered to said Stewart in his lifetime, prout the same hereto annexed, D. And the defendant objected to the sufficiency of the facts and circumstances above given in evidence to lay any foundation for the admission of secondary evidence of the existence and contents of said paper; but the court overruled the said objection, and admitted such secondary evidence, to which defendant excepts.

Testimony of Wm. Cranch.

Whereupon, the plaintiff gave in evidence to the jury the testimony of William Cranch, as follows:

That, in the year 1794, he was appointed by Messrs. Robert Morris and James Greenleaf their agent in regard to their concerns in the City of Washington, which were then very extensive, and first came to that city on the 15th of October, 1794. That the contracts in relation to lots and buildings were made almost, if not entirely, by the said James Greenleaf, but the said Robert Morris and Mr. John Nicholson became equally interested therein, and the management of their joint concerns was, by the said Morris and Nicholson, confided to the said James Greenleaf, until the 10th of July, 1795. That this witness had no written authority from Mr. Nicholson, but, as the agent of Mr. Greenleaf, he acted as the agent of the said Morris, Nicholson, and Greenleaf, as to all those joint concerns of those gentlemen which had been thus confided to the management of Mr. Greenleaf. That, after the 10th of July, 1795, he continued to act as the agent of Mr. Morris, until the summer of 1797, and as the agent of the said Greenleaf until his discharge under the insolvent law, but not as the agent of Mr. Nicholson, unless, perhaps, in the carrying into effect some previous engagements which had been made while he was acting as their agent as aforesaid. That the said Robert Morris and John Nicholson were in the City of Washington for a considerable time in the latter part of the summer and fall of 1796; after which Mr. Nicholson employed a separate agent. By these means, witness became acquainted with their transactions in relation to the property in Washington. This witness believes that, on the 10th of July, 1795, and 13th of May, 1796, there was an existing valid contract between Morris, Nicholson, and Greenleaf, and the late General Walter Stewart, for the sale by the former to the

latter of the lot No. 17, in the square No. 75, in the City of Washington, because he received from Mr. Greenleaf, then in Philadelphia, in a letter dated the 19th of February, 1795, a paper purporting to be a copy of such an agreement, under the hands and seals of the parties, by which the said Morris, and Nicholson, and Greenleaf, contracted to convey to the said Stewart in fee, on or before the 1st of June 1795, all the interest of the said Morris, Nicholson, and Greenleaf, in the squares in the City of Washington, numbered 105, 118, 119, 75, 101, 15, 27, and 54, to be paid for at the price of five pence, Pennsylvania currency, per square foot, by various instalments, commencing in March, 1795, and extending to the 10th of June, 1796; and because, on the 27th of February, 1795, this witness received from Adam Murray Stewart, the brother of General Walter Stewart, and who represented himself to be, and acted as, the agent of the said General Stewart, a letter dated at Georgetown, on the 26th of February, 1795, in the folllowing words and figures:

GEORGETOWN, 26*th February*, 1795.

Letter from A. M. Stewart to Wm. Cranch.

SIR: In consequence of a letter I had last night from my brother Gen. Walter Stewart, of Philadelphia, I think it proper to acquaint you of a purchase he has lately made from Messrs. Greenleaf, Morris, and Nicholson, for their entire right and interest in the following squares: No. 105, 118, 119, 75, 101, 15, 27, 54, that you may not, from a want of knowledge thereof, engage any part of those squares to other purchasers, or in case you should be in treaty for any part of them, as I have got a copy of the article of agreement between those gentlemen and my brother, for the abovementioned squares in my possession.

I am, sir,

Your very obedient servant,

ADM. MURRAY STEWART.

Mr. WILLIAM CRANCH.

To which letter, this witness on the 27th of February, 1795, wrote and sent to the said Adam Murray Stewart, a reply in the following words and figures:

CITY OF WASHINGTON, *February* 27, 1795.

W. Cranch to A. M. Stewart.

DEAR SIR: I am obliged by your kind letter of yesterday. Mr. Dalton had contracted for the purchase of lots No. 4, 5, 6, 7, 8, 9, in square No. 27, before the date of the contract with your brother; and the whole public part of square No. 15 was sold to Gov. Johnson on the 9th of January last. I know of no other contracts which can interfere with your brother's contract. You will observe that a saving was made of those lots which were previously contracted for.

I am,

My dear sir,

Your obliged,

WM. CRANCH.

Mr. ADAM MURRAY STEWART, *Georgetown.*

And because, on or about the 26th of June, 1795, General Walter Stewart came to the City of Washington, and had conversations with this witness in regard to his contract in relation to the property contained in those

squares, and was dissatisfied that it was not then in the power of Morris, Nicholson, and Greenleaf, to make title to that portion of the property which they had purchased from the commissioners of the city, and for which they had not then obtained the title Two of the squares mentioned in the contract, viz. squares numbered 15 and 27, had been previously sold to other persons; and, as the contract excepted such parts of the squares as had been previously contracted for, or appropriated to building or improvement, Gen. Stewart either at that, or a subsequent time, selected the squares numbered 491 and 533, in the place of the squares numbered 15 and 27. And because, after the death of Gen. Stewart, which happened early in the year 1796, Mr. George Davis, of Philadelphia, came to the City of Washington, and early in August, 1796, representing himself to be agent of the executors or heirs of Gen. Stewart, applied for an order from this witness to the commissioners of the City of Washington, to convey to the heirs of Gen. Stewart the public part of the property which the said Morris, Nicholson and Greenleaf, had contracted to convey to the said General Stewart; in consequence of which request, this witness gave the following order on the 9th of August, 1796, viz.

COMMISSIONER'S OFFICE, *August* 9, 1796.

DEAR SIR: The following are the square feet in the different squares to be conveyed by your order to Gen. Stewart:

Square 118, lots No. 4, 5, 9, 10, 11, and 12, containing .	30,170¾ feet.
" " No. 3, 35½ feet front on Pennsylvania Avenue, next No. 4, running to the back line 3,272½ .	33,413¾ "
Square 491, lots No. 1, 2, 3, 4, 5, 10, 11, 12, 16, 19, 20, and 24, with a proportion of alley, ...	79,014 "
Square 533, lots No. 1, 2, 4, 7, 13, 15, 16, 17, 20, 21, and 25, with a proportion of alley, ...	71,686 "
Square 54, lots No. 3, 4, 5, 6, 7, 8, and 9, with proportion of alley, ...	51,667 "
Squars 105, lots No. 15, 16, 17, and 20, with proportion of alley, ...	13,587 "
Whole amount, ...	249,367¼ "

The order for conveying the foregoing, please send p. bearer, and oblige yr. h. s.

JAMES R. DERMOTT.

To W. CRANCH, Esq.

AUGUST 7, 1796.

Wm. Cranch's order to convey to heirs of Gen. Stewart.

GENTLEMEN: Please to transfer the underwritten lots to the heirs of General Walter Stewart, and charge the same to Messrs. Morris, Nicholson, and Greenleaf.

WM CRANCH, *for M., N. & G.*

To the Com. of the Federal District.

And because it was the custom of Mr. Greenleaf to leave with this witness original contracts respecting the property in Washington, and, on or about the 1st of June, 1795, he came to Washington, and this witness, at his

request, drew a deed, intended to convey to the said Walter Stewart, and one Thomas Lloyd Moore, who it was understood had required an interest therein under the said Gen. Stewart, the original proprietor's portion of the squares numbered 75, 101, 105, and 119, supposed then to amount to 186,596 square feet; and this witness has a strong impression that he saw the original contract, and the original signatures of the parties, with the handwriting of some of whom he was acquainted, but he thinks he was not at that time acquainted with the hand writting of Gen. Stewart; but, whether he did actually see, or have possession of the said original contract, he does not now recollect; but, if he had the original, he has no doubt that he compared it with a copy which he had previously made in a book in which he generally entered copies of all such contracts—that copy having been originally made in the year 1795, as early as June, from a copy previously sent to him from Philadelphia, by Mr. Greenleaf, and which copy, he believes, was delivered to Mr. Nicholson, at his request, in the fall of 1796. Which book was here produced by the witness, and the copy of the said contract, as therein written, is as follows:

Articles of agreement between M., N., & G., & W. Stewart.

Articles of agreement, indented, made, and fully concluded and agreed upon this nineteenth day of February, in the year of our Lord one thousand seven hundred and ninity five, between Robert Morris, John Nicholson, and James Greenleaf, all of the city of Philadelphia, in the State of Pennsylvania, merchants, of the one part, and Walter Stewart of the said city, merchant, of the other part, in manner following, that is to say: the said Robert Morris, John Nicholson, and James Greenleaf, for the consideration hereinafter mentioned, do hereby, for themselves, their heirs, executors, and administrators, covenant, promise, grant, and agree, to and with the said Walter Stewart, his heirs and assigns, in manner following, that is to say: that they, the said Robert Morris, John Nicholson, and James Greenleaf, their heirs, executors, and administrators, or some or one of them, shall and will, on or before the first day of June next ensuing the date hereof, to the good liking and satisfaction of the said Walter Stewart, his heirs or assigns, make out a good title to, and by such good and sufficient conveyances and assurances in the law as the said Walter Stewart, his heirs or assigns, or his or their counc*il* learned in the law shall advise, convey and assure, or *caused* to be conveyed and assured, in possession, unto the said Walter Stewart, his heirs and assigns, or unto such person or persons as he or they shall in that behalf nominate and appoint, free from incumbrance, all the property which they, the said Robert Morris, John Nicholson, and James Greenleaf, or any or either of them, shall possess and be entitled unto, situate in the City of Washington, in the State of Maryland, and within the square marked in a general plan of the said City of Washington, number one hundred and five, one hundred and eighteen, one hundred and nineteen, seventy-five, one hundred and one, fifteen, twenty-seven, and fifty-four, save such parts of the said squares as shall have been contracted for, or appropriated to the purpose of building or improvement, before the date of these presents, containing, by estimation, three hundred and seventy-eight thousand square feet, but in case the Robert Morris, John Nicholson, and James Greenleaf, nor either of them, shall at such time possess, or be entitled to such of quantity ground within the squares aforesaid as will make up the said amount of 378,000 square amount, then the said Ro-

bert Morris, John Nicholson, and James Greenleaf, their heirs, executors, or administrators, or some or one of them, shall and will render back to the said Walter Stewart the original purchase money, with legal interest thereon, that may have been paid by him, the said Walter Stewart, on the quantity so deficient; or should the quantity of ground belonging to the said Robert Morris, John Nicholson, and James Greenleaf, in the squares aforesaid, amount to more than the quantity of three hundred and seventy-eight thousand square feet, then he, the said Walter Stewart, shall pay for the same on the terms and conditions expressed with regard to the quantity before mentioned. In consideration whereof, the said Walter Stewart, for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree, to and with the said Robert Morris, John Nicholson, and James Greenleaf, their executors, administrators, and assigns, in manner following, that is to say: that he, the said Walter Stewart, his heirs, executors, or administrators, shall and will well and truly pay, or cause to be paid unto the said Robert Morris, John Nicholson, and James Greenleaf, their executors, administrators, and assigns, for the absolute purchase of three hundred and seventy-eight thousand square feet of ground, at and after the rate of five pence, current money of Pennsylvania, per square foot, for each and every square foot the said pieces *or* ground shall contain, in manner following; that is to say: one fifth part thereof on or before the tenth day of March next, one other fifth part thereof on or before the tenth day of September next; one other fifth part thereof on or before the tenth day of March, which will be in the year of our Lord 1796; one other fifth part thereof on or before the tenth day of June, which will be in the year of our Lord 1796; and the other remaining fifth part thereof on or before the tenth day of December, which will be in the year of our Lord 1796, without interest. And to the true performance of all and singular the covenants and agreements aforesaid, on the part of the said parties, they bind themselves; that is to say the said Robert Morris, John Nicholson, and James Greenleaf, bind themselves, their heirs, executors, and administrators, unto the said Walter Stewart, his executors, administrators, and assigns, and the said Walter Stewart bindeth himself, his heirs, executors, and administrators, unto the said Robert Morris, John Nicholson, and James Greenleaf, their executors, administrators, and assigns, in the respective penalty or sum of twenty-four thousand dollars, firmly by these presents, to be paid by the party defective to the party complying. In witness whereof the said parties have hereunto interchangeably set their hands and seals, the day and year first within written.

R. M. [SEAL.]
J. N. [SEAL.]
J G. [SEAL.]
W. S. [SEAL.]

Sealed and delivered in presence of us:

This witness does not know that any part of the purchase money was ever paid by the said Stewart, or his heirs, to the said Morris, Nicholson, and Greenleaf, or to any of them, or to any person to their use; nor that any part of the property mentioned in the said contract was ever conveyed to the said Stewart, or his heirs, executors, or devisees.

This witness further testified, that, upon the discharge of the said Greenleaf, under the insolvent law of Maryland, in the year 1799, this witness

was appointed his trustee; and having heard that Gen. Uriah Forrest had agreed to sell to Jonathan Jackson, Elisha Lanham, and others, some of the lots in square No. 75, which had been contracted to be sold by Morris, Nicholson, and Greenleaf, to Gen. Stewart, this witness deemed it his duty to give notice to such purchasers that the lots had been previously sold to Gen. Stewart by Morris, Nicholson, and Greenleaf, before the 10th of July, 1795, and were, therefore, excepted out of the conveyance of Mr. Greenleaf to Morris, and *Greenleaf*, of the thirteenth of May, 1796, and that the legal title was in Mr. Greenleaf, or belonged to his estate; which notice this witness did give to the said Jackson, and to the said Lanham, and, as he believes, to all who at that time were known to him to have purchased of Gen. Forrest any of the lots so sold to Gen. Stewart. He does not recollect giving such notice to Shaw and Birth, or either of them. He thinks he knew Mr. Shaw by sight, but was not acquainted with Mr Birth. In consequence of such notices, Gen Uriah Forrest called on this witness, and had a conversation with him respecting the said claim, which conversation resulted in the proposition contained in the letter of the said Forrest, which was personally delivered by him to this witness on the first of November, 1799, in the following words and figures: (see No. 10, p. 44.) To which letter this witness wrote and sent to the said Forrest, on the 2d of November, 1799, the following reply: (see No. 11, p. 45.) This witness does not recollect having given any notice to Shaw and Birth, or either of them, after the said letter of the said Forrest; and presumes he did not, because from that letter he concluded that the claim was already known to them. This witness does not recollect that Mr. Greenleaf communicated his claim to Mr. Shaw, or that he asserted it before his discharge under the insolvent act of Maryland, in 1799. Mr. Greenleaf had been previously discharged under the insolvent act of Pennsylvania, in 1798, and was afterwards discharged under the bankrupt law of the United States, in 1801, 1802, or 1803. This witness has never reconveyed the property to Mr. Greenleaf. Has no recollection that he first named the claim to Mr. Greenleaf. Does not know that Mr. Greenleaf reserved any particular square for his future residence.

And the plaintiff further gave in evidence an agreement of the said Morris and Nicholson, bearing the same date with the said deed from Greenleaf to Morris and Nicholson, to wit, 13th May, 1796, as follows:

Agreement between M. and N. and G.

Property in the City of Washington belonging to Morris, Nicholson, and Greenleaf, July 10, 1795.

	Lots.	
Bought of the commissioners, - - - -	6,000	
Do. of Daniel Carroll, of Duddington, - -	220	
Do. of N. Young, - - - - -	428½	
Do. of Wm Bayley, - - - -	119½	
Do. of Forrest and Stoddert, - - -	239¼	
Do. of Wm. King, - - - - -	108	
		7,115¼
Deduct sold to Law for £50,000, Maryland currency, at 5d. a foot, 2,400,000 square feet, is - -	455⅔	
Deduct sold to Duncanson for £20,000, Maryland currency, at 5d. a foot, say reduced to £11,333 14, is 544,017½ square feet, is - - - -	103⅓	

Deduct sold to Stewart and Moore, about - -	50	
Deduct sold to sundry persons, including Allison and Naylor, - - - - - -	160	
		769
		6,346
James Greenleaf's proportion of the above, say one-third, is -		2,115
James Greenleaf's private property, 376 acres, supposed to average 3½ lots per acre, is - - - - - -		1,316
Total of lots, averaging 5,265 square feet,		3,431

Whereas the above named James Greenleaf hath sold to the above named Robert Morris and John Nicholson his interest in all the property in the City of Washington in which they were jointly interested, in the proportion of one-third part each, on the tenth day of July, in the year of our Lord one thousand seven hundred and ninety-five, and also his private property in the said city; and it appearing by the above estimate that the said Greenleaf's proportion of the said joint property, added to his private property, amounts to three thousand four hundred and thirty-one lots, averaging five thousand two hundred and sixty-five square feet each lot, for which the said Morris and Nicholson are to pay the said Greenleaf at the rate of one hundred and sixty dollars a lot, with interest at the rate of six per cent. per annum from the tenth day of July, in the year of our Lord one thousand seven hundred and ninety-five. Now, it is hereby covenanted and agreed between the said James Greenleaf of the one part, and the said Morris and Nicholson on the other part, for themselves, their heirs, executors, and administrators, jointly and severally, that if the real quantity of land contained in the said lots shall turn out, in the whole, to be less than the above estimate, the said Greenleaf shall pay the said Morris and Nicholson, (in their own engagement of 1st August last, in just proportions,) their executors or administrators, to be equally divided between them as tenants-in common for such deficient quantity, at the same rate at which he sold them as aforesaid, with interest as aforesaid: on the contrary, if the said real quantity shall turn out to be more than the said estimate, the said Morris and Nicholson, their heirs, executors, or administrators, shall pay the said Greenleaf, his executors or administrators, for such overplus, at the rate aforesaid, with interest as aforesaid. In witness whereof, the said Greenleaf, Morris, and Nicholson, have to these presents set their hands and seals, on the thirteenth day of May, in the year of our Lord one thousand seven hundred and ninety-six.

ROBERT MORRIS. [SEAL.]
JNO. NICHOLSON. [SEAL.]
JAMES GREENLEAF. [SEAL.]

Sealed, and delivered in the presence of
DUNCAN INGRAHAM.
JOHN R. STAM.

And the defendant, further to support the issue on his part above joined, and in addition to the evidence given by him as stated in the first bill of exceptions, produced and read in evidence to the jury the following documents, to wit:

1. A true copy of an agreement dated the 14th day of October, 1796, between the said Robert Morris, by the said William Cranch, his attorney or agent, of the one part, and a certain Elisha Lanham, of the other part; having first proved the loss of the original agreement, and that the paper so offered was a true copy thereof.

CITY OF WASHINGTON, *Oct.* 14, 1796.

Agreement between Morris and Lanham.

It is agreed between Robert Morris, esq., of the one part, and Elisha Lanham, housewright, of the other part, that the said Lanham will do and complete all the carpenter's and joiner's work for two houses on square No. 118, according to the annexed and particular description, and according to drawings and plans to be furnished him by Mr. William Lovering, for the sum of five hundred and eleven dollars and forty five cents, the one half thereof to be paid in cash in the following manner, to wit: twenty-six dollars and sixty-six cents as soon as the first floor is on; thirty-seven dollars and thirty three cents when the partitions of one floor are up, and one floor is laid; one hundred and fifty-four dollars and forty cents when the cornish is up, and roof on, and the whole covered and completed—making the whole of the cash payments. The other half of the whole of the work aforesaid is to be paid by discount of one-half thereof with the said Robert Morris, and the residue by discount with John Nicholson, esq., in payment for lot No. 8, in square No. 119, according to an agreement made this day by the said Morris and Nicholson, with the said Lanham. The whole work aforesaid is to be finished by next Christmas, provided the progression of the brick work should admit of the same, and proper materials should be furnished by the said Morris. Witness our hands.

WILLIAM CRANCH.
For ROBERT MORRIS, Esq.
ELISHA LANHAM.

Witness:
JONATHAN JACKSON.
SAMUEL ELLIOT, jr.

2. The record of this court of an ejectment now pending between the said James Greenleaf's lessee and said Wm. Waters for the said lot 8, in square 119.

DISTRICT OF COLUMBIA, *to wit:*

Record of suit. Greenleaf's lessee *vs.* W. Waters.

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the City of Washington, on the first Monday of June, being the first day of the same month, in the year of our Lord one thousand eight hundred and eighteen.

JAMES GREENLEAF'S lessee,
vs.
WILLIAM WATERS.

Be it remembered that, heretofore, to wit, on the twenty-eighth day of May, in the year of our Lord one thousand eight hundred and eighteen, the said James Greenleaf, by Benjamin L. Lear, esq., his attorney, filed in court here a declaration in the words and figures following, to wit:

DISTRICT OF COLUMBIA, *Washington County, sct.*

JAMES GREENLEAF'S lessee, } Ejectment, Narr.
vs.
WILLIAM WATERS. }

Richard Roe was attached to answer John Doe in a plea wherefore he, the said Richard Roe, with force and arms, and against the peace of the United States, entered into three certain messuages in the City of Washington, District of Columbia, situated on the northwestern corner of lot number eight, in square number one hundred and nineteen, as the same is distinguished on the plat of said city, together with the part of said lot to the messuages appertaining, running back the whole depth of said lot ninety-seven feet on Twentieth street west, in said city, with the appurtenances thereof, which James Greenleaf had demised to the said John Doe, for a term which is not yet expired, and ejected him from his said farm, and other wrongs to the said John Doe there did, to the great damage of the said John Doe, and against the peace of the United States. And thereupon the said John Doe, by B. L. Lear, his attorney, complains that, whereas the said James Greenleaf, on the twenty-sixth day of May, in the year eighteen hundred and eighteen, at the county aforesaid, had demised the said premises, with the appurtenances, to the said John Doe, to have and to hold the same to the said John Doe and his assigns, from the twenty fifth day of May, in the year aforesaid, for and during, and unto the full end and term of seven years thence next ensuing, by virtue of which said demise the said John Doe entered into the premises, and became and was thereof possessed for the said term so to him thereof granted as aforesaid; and the said John Doe being thereof possessed, the said Richard Roe afterwards, to wit, on the twenty-seventh day of May, in the year aforesaid, with force and arms, &c., entered into the premises in which the said John Doe was so interested in manner and the term aforesaid, which is not yet expired, and ejected him, the said John Doe, out of his said farm, and other wrongs to the said John Doe there did, to the great damage of the said John Doe, against the peace of the United States. Wherefore, the said John Doe saith that he is injured, and has sustained damage to the value of fifty dollars, and therefore he brings suit, &c.

B. L. LEAR, *for plaintiff.*

TWEEDLEDUM, } *Plaintiffs.*
TWEEDLEDEE, }

Mr. WILLIAM WATERS: I am informed that you are in possession of, or claim title to, the premises in this declaration of ejectment mentioned, or to some part thereof; and I being sued in this action as casual ejector only, and having no claim or title to the same, do advise you to appear here in next June term in the circuit court of the District of Columbia, by some attorney of that court, and then and there, by rule of the same court, to cause yourself to be made defendant in my stead; or otherwise I shall suffer judgment to be entered therein against me by default, and you will be turned out of possession. Dated this 28th day of May, 1818.

Yours, &c.,

RICHARD ROE.

A copy of which said declaration and notice was made and delivered to the marshal of the district aforesaid, thereon endorsed, "to be served on the defendant at least eight days before the court."

At which said first Monday of June, being the first day of the same month, in the year aforesaid, and the day of the service of the aforegoing declaration in ejectment, comes into the court here the said John Doe, lessee as aforesaid, by his attorney aforesaid, and the marshal of the district aforesaid, to wit: Tench Ringgold, gentleman, to whom a copy of the said declaration in ejectment and notice, as aforesaid, was, in form aforesaid, made and sent, certifies his service thereof in form following, to wit: whereupon, the said John Doe, lessee as aforesaid, by his attorney aforesaid, prays that the defendant, the tenant in possession of the premises aforesaid, or those under whom he claims, to his declaration aforesaid may appear and answer; and the said William Waters, by John Law, Francis S Key, and James Dunlop, esquires, his attorney, appears in court here; whereupon, it is ruled by the court here, with the consent of the said John Doe, lessee as aforesaid, by his attorney aforesaid, and the said William Waters, by his attorneys aforesaid, who claims the title in question, that the said William Waters be admitted defendant in the place of the now defendant, Richard Roe, the casual ejector, and that he immediately plead to the declaration aforesaid, the general issue; and whereupon the said William Waters, by his attorneys aforesaid, prays leave of the court here to imparle until the fourth Monday of December next, and then to answer to the declaration aforesaid of the said John Doe, lessee as aforesaid, and to him the same is granted: the same day is given to the said John Doe, lessee as aforesaid, also.

At which said fourth Monday of December, being the twenty-eighth day of the same month, in the year aforesaid, comes again into the circuit court here as well the said John Doe, lessee as aforesaid, by his attorney aforesaid, as the said William Waters, by his attorneys aforesaid. Thereupon, on motion of the said William Waters, by his attorneys aforesaid, leave is given by the court here by the said William Waters, to ascertain his defence, and answer to the declaration aforesaid of the said John Doe, lessee as aforesaid, until the first Monday of June next: the same day is given to the said John Doe, lessee as aforesaid, &c.

At which said first Monday of June, being the seventh day of the same month, in the year eighteen hundred and nineteen, till which said day the said William Waters had leave to ascertain his defence, and answer to the declaration aforesaid of the said John Doe, lessee as aforesaid, in the plea aforesaid, came again into the circuit court here as well the said John Doe, lessee as aforesaid, by his attorney aforesaid, as the said William Waters, by his attorneys aforesaid; and the said William Waters, by his attorneys aforesaid, defends the force and injury, when, &c., and takes defence according to his pretensions, as they shall appear to be laid down on the return of a warrant of resurvey, to be issued in this cause, and says that he is not guilty of the trespass and ejectment aforesaid, in the declaration aforesaid mentioned, in manner and form as the said John Doe, lessee as aforesaid, above complains against him; and of this he puts himself upon the country, and the said John Doe, lessee as aforesaid, in like manner. Thereupon, further process of, and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the court here thereon, is further continued until the fourth Monday of December next.

At which said fourth Monday of December, being the twenty-seventh day of the same month, in the year last aforesaid, comes again into the cir

cuit court here as well the said John Doe, lessee as aforesaid, by his attorney aforesaid, as the said William Waters, by his attorneys aforesaid; and the said James Greenleaf, by his attorney aforesaid, sets forth and files in court here an affidavit on oath, that he cannot have a fair and impartial trial in the said suit, in the circuit court of the District of Columbia for the county of Washington It is, for reasons appearing to the court here, ordered that a record of proceedings, and all the papers filed in this cause, be transmitted to the clerk of the county of Alexandria, in the said District. (They are accordingly transmitted.)

DISTRICT OF COLUMBIA, *County of Washington, sct.*

I, William Brent, clerk of the United States' circuit court of the District of Columbia for the county of Washington, do hereby certify that the aforegoing is a true record of the proceedings of a suit in this court, wherein James Greenleaf's lessee was plaintiff, and William Waters defendant; which suit is removed to the circuit court of Alexandria county. In testimony whereof, I hereto set my hand, and affix the seal of my office, this 22d day of April, 1820.

[L. S.] WM. BRENT, *Clerk.*

At a United States' circuit court of the District of Columbia, continued and held for the county of Alexandria, the second day of June, 1820, a transcript of the record in the case of Greenleaf's lessee v. Waters, in the circuit court for Washington county was filed, and the said case docketed and continued.

(The case of James Greenleaf's v. William Waters, has been regularly continued in the court for Alexandria county until the present time. The same proceedings as in the case of Greenleaf's lessee vs. Birth having been had.)

3 An original letter, dated 10th March, 1797, from said James Greenleaf to said commissioners, and the copy of the bond therein referred to, dated 24th June, 1796.

PHILADELPHIA, *March* 10, 1797.

Letter from J. Greenleaf to commissioners.

GENTLEMEN: I take the liberty to send you enclosed, a transcript of a bond given me on the 24th June last by Robert Morris and John Nicholson, the original of which is in my possession. Relying on the good faith of Mr. Morris, I thought it unnecessary to communicate the transaction to you; but, as it may perhaps not yet be too late, I take the liberty to forewarn and caution you against making any transfers to the order of Messrs. Morris and Nicholson, that may militate with the tenor of the bond in question; to which, also, I beg leave to add my most urgent request that you will not countenance any act on their part that may lessen my safety with regard to my contracts with you, so far as I can with propriety be still held responsible for the performance of them. I am, with great respect, gentlemen, your very ob't serv't,

JAMES GREENLEAF.

The Commissioners of the Federal District.

Bond—Morris and Nicholson to J. Greenleaf and comm'rs.

Whereas the subscribers, Robert Morris and John Nicholson, both of the city of Philadelphia, esqrs., together with James Greenleaf, of the city of New York, esq., by their bond, dated the third day of May, in the year of our Lord seventeen hundred and ninety-four, became jointly and severally bound to

Thomas Johnson, David Stewart, and Daniel Carroll, then commissioners appointed by virtue of the act of Congress for establishing the temporary and permanent seat of the Government of the United States, in the sum of nine hundred thousand dollars, to be paid to the said commissioners, or their successors, conditioned that the said Morris and Greanleaf (amongst other things) well and truly pay to the said commissioners, or their successors, the sum of eighty thousand Spanish dollars, agreeably to a contract before that time made by the said Morris and Greenleaf with the said commissioners, as by the said bond, and the condition thereof, reference being thereunto had, will more fully appear: and whereas the said James Greenleaf hath lately sold to the said Robert Morris and John Nicholson, in fee simple, as tenants in common, to be equally divided between them, all his estates and titles, both legal and equitable, situate in the City of Washington, in the territory of Columbia, (except a small part which he hath reserved to himself;) and it was the agreement and intention of the said Robert Morris, John Nicholson, and James Greenleaf, at the time of the said sale, that the said James Greenleaf should be entirely exonerated from the payment of any part of the said eighty thousand dollars in the condition of the aforesaid bond mentioned: (the same being due to the said commissioners on account of property in the City of Washington purchased of them by the said Robert Morris and James Greenleaf, and already conveyed, or to be hereafter conveyed, according to contract with the commissioners, bearing date the twenty-first day of April, Anno Domini one thousand seven hundred and ninety-four.) Now, in order to carry the said agreement and intention more securely into effect, the said Robert Morris and John Nicholson, for themselves, their heirs and assigns, jointly and severally, do hereby covenant and agree with the said James Greenleaf, his heirs, executors, and administrators, that they, the said Robert Morris and John Nicholson, their heirs, executors, and administrators, will for ever indemnify and save harmless the said James Greenleaf, his heirs, executors, and administrators, from all costs and charges, and all actions, suits, claims, and demands, of any persons whatever, for, or by reason, or by virtue, or on account of the abovementioned bond; and they also covenant and agree with the said James Greenleaf, his executors and administrators, and also with Gustavus Scott, William Thornton, and Alexander White, the several commissioners, and their successors, that all the aforesaid eighty thousand dollars, or any part thereof, due or to become due, on or by virtue of the above recited bond, shall be considered and operate as a lien and charge upon the one thousand lots which shall last remain to be conveyed in the said City of Washington; the residue of the six thousand lots which have been heretofore purchased by the said Robert Morris, John Nicholson, and James Greenleaf, or any or either of them, the commissioners for the time being. In witness whereof, the said Robert Morris and John Nicholson have to these presents set their hands and seals this twenty-fourth day of June, in the year of our Lord one thousand seven hundred and ninety-six.

ROBERT MORRIS.
JOHN NICHOLSON.

Sealed and delivered in presence of:

GARRETT COTRINGER.
JOHN JONES.

4. A certain other original letter, dated 31st July, 1795, from said Greenleaf to the said commissioners, and the copy of the other letter therein referred to, dated 11th July, 1795, addressed to Edmund Randolph, then Secretary of State.

NEW YORK, *July* 31, 1795.

Letter from J. Greenleaf to commissioners.

SIRS: I have your letter of the 20th inst. It would have been noticed before, had I received it; but it came to my hands not an hour since, with the Philadelphia post-mark of yesterday on the superscription. Why it did not pass to me in the regular course, with the post-mark of Georgetown on it, is best known to yourselves.

You call on me to substantiate charges made to the Secretary of State against you, of direct fraud in the execution of your office. I have never made such charge. Subjoined is a transcript of my letter to the Secretary of State, which, by yours to me, I should judge you had not seen. In my letter I have said that I do firmly believe that you have been governed by your personal interest to the detriment of the part of the city I wished the most to promote; and that one of my motives for disposing of my property in the Federal City arose from the conviction in my own mind, that you would oppose every obstacle to my operations while tending to the benefit of that part of the city.

I see here no charge of fraud. I do still, and ever shall, believe what I advanced to the Secretary of State; and, unfortunately for the federal establishment, I am not alone in this belief.

If my feelings have been wounded by your general conduct towards me and my interests, since your being in office, I conceived I had a right to be governed by them, and have acted accordingly.

I see no necessity of assuming the position in which it is evidently your desire to place me, to wit, that of an accuser of fraudulent transactions. Proofs of that nature, whatever facts may be, are difficult, because they require a minute investigation of a long series of transactions; and as you have, in the present instance, no right to call upon me for such proof, I shall not trouble myself by any attempt to make them. You intimate, in your letter, that my charge of fraud on your part arises from a wish on mine to cover my inability to comply with my engagements with the public. This appears to me to be a strange mode of reasoning, and, I declare to you, is totally unfounded; but had you aided me, as I conceived I had a right to expect from you, and as your worthy predecessors thought with me, you should have found at least that I could have done more than I did do. Be this as it may, I am not ashamed of the operations of which I have been the principal promoter; and you, as the servants of the public, ought to have viewed them with peculiar satisfaction, when you found that those operations gave a rise of eighteen fold, in some instances, to the value of the property entrusted to you. I will further add that those operations have called for expenditures on my part, and the gentlemen concerned with me, of upwards of one hundred and fifty thousand dollars for the past year, a sum four-fold what was ever contemplated by your predecessors as necessary to the fulfilment of my contracts; and that at least three times that sum has flown to the federal establishment through my immediate means, and those concerned with me. If, therefore, the strict letter of agreement has in some instances been deviated from, the spirit of the agreement has been attended to; and I know too

well the intention of the President to believe he placed you where you are to cavil at trifles.

I repeat to you, sirs, that I have no desire or time to enter the lists with you, and prove that you have acted fraudulently. I do believe what I have before advanced; and I do believe, further, that it is unfortunate, both for yourselves and the public, that you are placed in a sphere in which you will neither render them service, or do yourselves honor.

JAMES GREENLEAF.

G. SCOTT and WM. THORNTON, Esq'rs,
Washington.

PHILADELPHIA, *July* 11, 1795.

Letter from J. Greenleaf to Secretary State.

SIR: In obedience to your request that I would commit to writing what has passed from me in conversation with you on the subject of the Federal City, I now, with all due respect, do say that Messrs. G. Scott and Wm. Thornton, comm'rs of the federal district, do possess property in and near the Federal City, on the Georgetown side of it; that I do most firmly believe that, conceiving it to be for their personal interest to promote the benefit of that part of the city, to the detriment of that part lying on the eastern branch, they do, designedly and intentionally, discourage every thing that can tend to promote the growth or respectability of this last mentioned part. I do further say that certain propositions have been made the commissioners by Mr. T. Law for the improvement of the city, and for facilitating the transfer of property to him with perfect security to the public, to none of which he has yet received reply, though it has been promised him. And I do further say that, governed by the conviction that the said commissioners have constantly opposed, and will continue to oppose, every obstacle to my operations in the city, while tending to the benefit of the eastern part of it, and that they will withhold from me such facilities as the nature of the object requires, and can with reason and propriety be asked, that I have been induced to divest myself of my whole interest in the city, and withdraw my personal exertions to the promotion of that establishment, except so far as regards the improvement of one square for my future residence.

I have the honor, &c.,
JAMES GREENLEAF.

EDMUND RANDOLPH, Esq.,
Secretary of State.

5. A list of squares in which lots had been sold by Morris, Nicholson and Greenleaf, made at the request of the said commissioners by said Wm. Cranch, dated the 9th June, 1796; and of lots purchased of the said commissioners, and sold by said Morris, Nicholson and Greenleaf, recorded in the minute book of the proceedings of said commissioners, folio 67, 68, 69, 70, under date of the 18th January, 1797.

List of lots purchased of the comm'rs & sold by M., N. & G.

Lots purchased of the commissioners, and sold by Messrs. Morris, Nicholson and Greenleaf.

To whom sold.		Amount of square feet.	The number of houses contracted to be built by purchasers.
Thomas Law -	2,400,000. It is supposed that Mr. Law may choose $\frac{2}{3}$ of his property from the public lots, which will make 1,600,000		151
W. M. Duncanson	940,000. Say $\frac{2}{3}$ public lots 640,000		60
Ditto -	800,000 do do 533,333		50
		2,773,333	
J. R. Dermott -	- - - 5,265		
H. Edwards -	- - - 2,915		
Pratt & Wilson -	- - - 9,756		2
Rich'd Eliot -	- - - 6,964		1
Ditto -	- - - 22,996		4
W. Whann -	- - - 10,030		
W. Thornton -	Public and private - 122,370		
James Tutt -	- - - 1,968		
		182,264	
W. Stewart -	378,000; of which the part belonging to J. Greenleaf, as original proprietor, is 181,656, leaves - - 196,344		
James Hogan -	- - - 5,568		1
Sam'l Helton -	- - - 9,612		1
N. Traverse -	- - - 3,500		1
Joshua Gregg -	- - - 2,500		
Leonard Cook -	- - - 2,500		
James Gill -	- - - 3,500		1
And'w Estave -	- - - 4,896		1
		228,420	
John Spencer -	- - - 9,792		
John Lovering -	- - - 2,448		1
Lewis Morin -	- - - 9,792		2
Edw'd Burroughs	- - - 4,896		
Rea & Parsons -	- - - 19,584		5
James Bain -	- - - 4,896		1
Rich'd Gridley -	- - - 9,792		1
		61,300	
James Dant -	- - - 2,550		
Isaac McLain -	- - - 2,550		
Joshua Ward -	- - - 2,400		1
Isaac Reid -	- - - 3,000		
John Beckley -	- - - 3,600		
Eben. Clark -	- - - 31,784		5

Sam'l Baker - - - -	15,960		4
S. Boone - - - -	1,650		1
S. Cook - - - -	3,060		
T. Wilson - - - -	4,600		
Levy Green - - - -	4,836		
George French - - - -	31,590		
		107,580	
Square feet - -		3,352,897	294

3,352,897 square feet is equal to 636 lots ½ of which is 212, which is the number of houses for which they were bound to contract for with the purchasers. M, N, and G., have actually contracted for the building of 294 houses. They have, therefore, not only fulfilled that part of their contract which says that they shall not sell or contract for the sale of any of the said lots before the 1st of January, 1796, but on the express condition that one such house on every third lot so sold, or contracted to be sold, but they have obligated their purchasers to build 82 houses, more than the number necessary to supply their contract with the commissioners.

The whole number of lots sold by Morris, Nicholson and Greenleaf, including private lots, is 4,739,563. The number of houses this amount would require is 300 houses, if the whole had been public lots: the number contracted for is 294, which would leave a deficiency of six only.

List of squares in which lots have been sold.

A list of squares in which lots have been sold by Messrs. Morris, Nicholson and Greenleaf, made at the request of the commissioners, June 9, 1796.

Square west of	No. 4	No. 295	No. 692
No.	11	321	693
	15	322	694
	20	324	695
	27	347	740
	28	348	S. of 740
	33	377	S. of S. of 740
	54	378	741
	74	379	742
	78	381	S. of 742
	101	382	743
	105	407	744
	118	408	771
	86	430	875
	168	431	930
	491	458	953
	533	460	769
	225	490	768
	226	572	767
	228	575	882
	229	727	951
	254	762	289
	256	789	

Square west of No.	258	No 791
	260	732
	290	734
	293	689
	294	690

Lots have been sold by Messrs. Morris, Nicholson and Greenleaf, in the squares above enumerated.

W. CRANCH.

6. The original allotments from the said commissioners' office of the said squares No 75, 101, 105, 118, 119, 54, 491, and 533; and proved that the total number of lots in the said squares was ninety.

[The only plat filed among the papers is that of square 75, for which see p. 14]

Objection to foregoing documents overruled.

To the admission of each of which several documents aforesaid, the plaintiff, by his counsel, objected; but the court overruled the objection, and admitted all of the same to be given in evidence to the jury; to which plaintiff, by his counsel, excepts, &c.

Whereupon, the plaintiff, by his counsel, prayed the court to deliver to the jury the two several instructions following, to wit:

First prayer of pl'tff.

And the plaintiff further prayed the court to instruct the jury that, if the jury find, from the evidence aforesaid, that, before the date and execution of the said articles of agreement, dated 10th July, 1795, between said J. Greenleaf and Morris and Nicholson, the said Greenleaf, Morris and Nicholson, and the said Walter Stewart, had concluded a contract or articles of agreement, in writing, under the hands and seals of the parties, whereby the said Greenleaf, Morris and Nicholson, had contracted and agreed with said Walter Stewart to bargain, sell, and convey to him certain lots in the said City of Washington, a d, among others, the lot now in controversy, upon the terms and conditions set forth in the copy of said contract or articles of agreement above offered in evidence by plaintiff, and that such contract had not been annulled by the parties thereto at the time of the death of said Stewart, nor at the time of the execution of the said deed from Morris and Nicholson to Duncanson, Deakins and Forrest, dated 26th October, 1796, as aforesaid, then no title in the lot in controversy passed by the last mentioned deed, and the defendant acquired no title to the said lot by force of the deeds, agreements, and documents above given in evidence by the defendant; and, further, that it is immaterial whether the said Stewart ever complied with the terms and conditions of said contract, or whether he was insolvent or able to comply with such terms, so the said contract had been duly concluded and executed as a contract between the parties, and had not been annulled or rescinded by the parties before the execution of the said deed from Greenleaf to Morris and Nicholson, dated 13th May, 1796, or before the execution of the said deed from Morris and Nicholson to Duncanson, Deakins and Forrest, dated 26th October, 1796, as aforesaid.

Second prayer of pl'tff.

2. That the evidence aforesaid is not sufficient to prove that the said contract between Morris, Nicholson and Greenleaf, on the one part, and W. Stewart, on the other, had been annulled or rescinded between the parties at any time prior to the execution of either of the said last mentioned deeds.

The first of which instructions (the defendant' scounsel assenting thereto,) was allowed by the court; but the court altogether refused to allow the second; to which refusal the plaintiff, by his counsel, excepts; and this his bill of exceptions is sealed, &c., this 7th day of June, 1833.

B. THRUSTON. [SEAL.]
JAMES S. MORSELL. [SEAL.]

Documents referred to in Plaintiff's second bill of exceptions.

B.

Deposition of Walter C. Livingston.

The deposition of Walter C. Livingston, of lawful age, taken *de bene esse*, to be read in evidence in an action of ejectment depending in the circuit court of the District of Columbia, in the county of Alexandria, in the said District, in which James Greenleaf's lessee is plaintiff, and the President, Directors, and Company, of the Bank of Columbia, are defendants: taken on behalf of the said plaintiff, at the borough of Northampton, in the county of Lehigh, in the State of Pennsylvania, on the twenty seventh day of October, A. D. 1829.

The said Walter C. Livingston being by me, Jacob Stein, one of the judges of the court of common pleas of the county of Lehigh, and State of Pennsylvania, examined, and cautioned, and sworn, to testify the whole truth, deposed as follows, to wit:

That the late John Nicholson, of Pennsylvania, who was formerly in partnership with Robert Morris and James Greenleaf, died intestate, and as it was generally believed, insolvent; and that no administration has been taken upon his estate. That the said John Nicholson having formerly been Comptroller of the State of Pennsylvania, his papers have been taken into the possession of the Auditor of that State. That at the request of the said James Greenleaf, the lessor of the plaintiff of this action, this deponent has been permitted to search among the said papers of the said John Nicholson, in the said Auditor's office, for a certain original contract between the said Robert Morris, John Nicholson, and James Greenleaf, of the one part, and one Walter Stewart, of the other part, respecting lots in the City of Washington, dated the 19th of February, 1795. That he has, accordingly, made search among the said papers, and is satisfied the said original contract was not among them, and could not be found. This deponent further says, that he procured from ——— Farrand, of the city of Philadelphia, a paper purporting to be a copy of the said contract—a copy of which paper, made, compared, and examined by this deponent, is hereunto annexed; and upon the back of it, this deponent has written his name, (Walter C. Livingston,) for the purpose of identifying the same. That he is acquainted with the said ——— Farrand, and knows that he has made long, frequent, and diligent searches among all the above mentioned papers of the said Nicholson, in the Auditor's office at Harrisburg, and that he has had access to many other papers of the said Nicholson, which he has closely examined, and that he was told by the said Farrand, that he had never met with any other paper similar to the one above described. And further the deponent saith not.

WALTER C. LIVINGSTON.

STATE OF PENNSYLVANIA, *County of Lehigh,* } *to wit:*

I, Jacob Stein, one of the judges of the court of common pleas, of the county of Lehigh, and State of Pennsylvania, do certify that the before written deposition of Walter C. Livingston was taken in the manner, and at the time and place, and for the purpose aforesaid; that the said deponent was duly by me carefully examined, and cautioned, and sworn to testify the whole truth, and in my presence subscribed the testimony by him given as aforesaid, after the same was by him reduced to writing. And I further certify that I am not of counsel or attorney for either of the parties, nor interested in the event of the cause; that no notification was given to the adverse party or parties, or to their attorney, to be present at the taking of the said deposition, because neither the said adverse party nor parties, nor their attorney, was within one hundred miles of the place of caption of the said deposition at the time of taking the same; and that the reason of taking the same is, that the said deponent lives at a greater distance from the place of trial, (viz. the District of Columbia,) than one hundred miles. In testimony whereof, I have hereunto set my hand and seal, the twenty-seventh day of October, 1829.

JACOB STEIN. [SEAL.]

Copy of agreement referred in foregoing deposition.

Agreement—Morris, and Nicholson and Greenleaf, with Walter Stewart.

Articles of agreement indented, made, and fully concluded and agreed upon, this nineteenth day of February, in the year of our Lord one thousand seven hundred and ninety-five, between Robert Morris, John Nicholson, and James Greenleaf, all of the city of Philadelphia, in the State of Pennsylvania, merchants, of the one part, and Walter Stewart, of the said city, merchant, of the other part, in manner following; that is to say: the said Robert Morris, John Nicholson, and James Greenleaf, for the consideration hereinafter mentioned, do hereby, for themselves, their heirs, executors and administrators, covenant, promise, grant and agree to, and with the said Walter Stewart, his heirs and assigns, in manner following, that is to say: that they, the said Robert Morris, John Nicholson, and James Greenleaf, their heirs, executors, and administrators, or some or one of them, shall or will, on or before the first day of June next ensuing the date hereof, to the good liking and satisfaction of the said Walter Stewart, his heirs or assigns, make out a good title to, and, by such good and sufficient conveyance and assurances in the law, as the said Walter Stewart, his heirs or assigns, or his or their *council* learned in the law shall advise, convey and assure, or cause to be conveyed and assured, in possession unto the said Walter Stewart, his heirs and assigns, or unto such person or persons as he or they shall in that behalf nominate and appoint free from incumbrance, all the property which they the said Robert Morris, John Nicholson, and James Greenleaf, or any or either of them shall possess and be entitled unto, situate in the City of Washington, in the State of Maryland, and within the squares marked in a general plan of the said City of Washington, numbers one hundred and five, one hundred and eighteen, one hundred and nineteen, seventy-five, one hundred and one, fifteen, twenty-seven, and fifty-four, save such parts of the said squares as shall have been contracted for, or appropriated to the purposes of building or improvement, before the date of

these presents, containing, by estimation, three hundred and seventy-eight thousand square feet; but in case the said Robert Morris, John Nicholson, and James Greenleaf, or either of them, shall at such time possess or be entitled to such quantity of ground within the squares aforesaid, as will make up the said amount of 378,000 square feet, then they, the said Robert Morris, John Nicholson, and James Greenleaf, their heirs, executors, or administrators, or some one of them, shall and will render back to the said Walter Stewart, the original purchase money, with legal interest thereon, that may have been paid by him the said Walter Stewart on the quantity so deficient; or should the quantity of ground belonging to the said Robert Morris, John Nicholson, and James Greenleaf, in the squares aforesaid, amount to more than the quantity of three hundred and seventy-eight thousand square feet, then he the said Walter Stewart shall pay for the same on the terms and conditions expressed with regard to the quantity before mentioned. In consideration whereof, the said Walter Stewart, for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree to and with the said Robert Morris, John Nicholson, and James Greenleaf, their executors, administrators, and assigns, in manner following; that is to say: that he, the said Walter Stewart, his heirs, executors, or administrators, shall and will well and truly pay, or cause to be paid unto the said Robert Morris, John Nicholson, and James Greenleaf, their executors, administrators, and assigns, for the absolute purchase of the said three hundred and seventy-eight thousand square feet of gound, at and after the rate of five pence current money of Pennsylvania, per square foot, for each and every square foot the said piece of ground shall contain, in manner following; that is to say: one-fifth part thereof on or before the tenth day of March next, one other fifth part thereof on or before the tenth day of September next, one other fifth part thereof on or before the tenth day of March, which will be in the year of our Lord 1796, one other fifth part thereof on or before the tenth day of June, which will be in the year of our Lord 1796, and the remaining one-fifth part thereof on or before the tenth day of December, which will be in the year of our Lord 1796, without interest. And to the true performance of all and singular the covenants and agreements aforesaid on the part of the said parties, they bind themselves, that is to say, the said Robert Morris, John Nicholson, and James Greenleaf, bind themselves, their heirs, executors, and administrators, unto the said Walter Stewart, his executors, administrators, and assigns, and the said Walter Stewart bindeth himself, his heirs, executors, and administrators, unto the said Robert Morris, John Nicholson, and James Greenleaf, their executors, administrators, and assigns, in the respective penalty or sum of twenty four thousand dollars, firmly by these presents, to be paid by the party defective to the party complying. In testimony whereof, the said parties have hereunto interchangeably set their hands and seals the day and year first within written.

WALTER STEWART. [SEAL.]
ROBERT MORRIS. [SEAL.]
JAMES GREENLEAF. [SEAL]
JOHN NICHOLSON. [SEAL.]

Sealed and delivered in presence of us:

GARRETT COTTRINGER.
JOHN JONES.

C.

J. Greenleaf's affidavit.

James Greenleaf makes oath that, on or about the 19th February, 1795, articles of agreement, in writing, and under the hands and seals of the parties, dated on the day aforesaid, were duly executed and delivered between Robert Morris, John Nicholson, and this deponent, of the one part, and Walter Stewart of the other part; one part of the said agreement, under the hands and seals of the parties, being retained by the deponent, the other delivered to said Stewart; that the original part, so retained by this deponent, was, some time in the year 1795, placed in the hands of his then agent, William Cranch, esq., at the City of Washington, and was, as this deponent is credibly informed, and verily believes, delivered by said W. Cranch to said John Nicholson, some time in the year 1796; that this deponent has not had the said paper in his possession since it was so placed in the hands of his agent; that he has procured his said agent to make diligent search for the same among his papers, but without success; that he has also made diligent search himself, and caused search to be made by others, among the papers of said John Nicholson, for the said original paper; but after all the diligence and exertion in his power to make by himself and others, he has not been able to find the said original paper among the papers of said Nicholson, or elsewhere; that he has also made diligent search among the papers of said Robert Morris, (all whose papers were lodged with the clerk of the commissioners of bankruptcy,) for the said original paper, without success; that deponent has also made diligent search among the papers of said John Nicholson for the said original paper, at the office of the Auditor of Pennsylvania, where the papers of said Nicholson were deposited; and has caused the said papers, and all the papers of said Nicholson, wherever they could be traced to be searched by others; and he was not able, either by means of his own search, or by means of the searches of those employed by him for the purpose, to find said original paper; that it is utterly out of his power to find or produce the same, and he has good and certain reason to think and believe, and does verily think and believe, that the said paper was destroyed by some means unknown to this deponent, or otherwise irretrievably lost, several years before the commencement of this suit; and that such its destruction and loss was wholly without the consent or privity, and against the will of this deponent; that this deponent has used the utmost diligence and exertions to have the original part of said paper which was delivered to said Stewart, as aforesaid, produced in evidence in this cause, the said Stewart having died sometime in the year 1796, leaving his widow, Deborah, his executrix or administratrix, who resided at Philadelphia, and with whom this deponent has used the utmost exertions to prevail on her to look for and produce the last mentioned original, but who uniformly refused to give him satisfaction on the subject; and this deponent refers to the proceedings in this cause to show the steps taken by him to have the said original paper, if in her possession, produced, and how he has been defeated; that the copy of the said paper now offered in evidence from the book of said W. Cranch is a true copy of the said original, except that the clerk who copied the paper into said book omitted the names of the two subscribing witnesses, Garrett Cottringer and John Jones, whose names were subscribed as attesting witnesses to the original, and, also, in transcribing the signatures of the parties to the instrument, put to the copy their initials, instead of the names as written out in the original; that the

said original was also fairly and accurately copied in this deponent's own books; and that another copy thereof, now produced, and exactly corresponding with the copy in the book of Mr. Cranch, (with the exceptions aforesaid,) is an exact copy, taken from this deponent's own books by the late Peter Lohra, notary at the city of Philadelphia.

Sworn to in open court.

EDM. I. LEE, *C. C.*

D.

Attachment—proceedings v. Deborah Stewart.

At a United States' circuit court of the district of Columbia, continued and held for the county of Alexandria, the 9th day of May, 1822, Deborah Stewart having been summoned as a witness to testify on behalf of James Greenleaf's lessee against William R. Cozens, and failing to appear, it is ordered that an attachment be awarded against the said Deborah Stewart, returnable the 15th day of this term.

DISTRICT OF COLUMBIA, *to wit*:

The United States of America to the Marshal of the eastern district of Pennsylvania, greeting:

Attachment v. D. Stewart.

We command you that you attach Deborah Stewart, of Philadelphia, so that you have her body before the United States' circuit court of the District of Columbia for the county of Alexandria, at the court-house in the town of Alexandria, on the fifteenth day of the present term of said court, to answer as well a certain contempt by her to us offered, in not attending the court as a witness for James Greenleaf's lessee, plaintiff, *and* William R Cozens, defendant, in which case a subpœna, dated 21st of January, 1822, by the order of the court, commanding the said Deborah Stewart to appear before the said court on the second day of the said court now in session, to bring with her a certain agreement of bargain and sale, under seal between Robert Morris, John Nicholson, and James Greenleaf, of the one part, and Walter Stewart, of the other part, for certain property in the City of Washington, executed by the parties on or about the 19th day of February, 1795, in the presence of Garrett Cottinger and John Jones, the subscribing witnesses thereto, in a certain matter of controversy in our said court depending and undetermined, between the said James Greenleaf's lessee, plaintiff, and William R. Cozens, defendant; which said subpœna hath been returned by the marshal of the eastern district of Pennsylvania, "served on the said Deborah Stewart;" and the said Deborah Stewart having been solemnly called, and failing to appear here on the second day of this term, according to the command of the said summons, as upon those things which to her shall be then and there objected; and further to do and receive whatever the said court shall in that part consider; and have then there this writ. Witness, the honorable William Cranch, Chief Judge our said court, this 9th day of May, 1822.

EDM. I. LEE, *C. C.*

The 15th day of the term will be the 22d day of the present month.

EDM. I. LEE, *C. C.*

COMMONWEALTH OF PENNSYLVANIA, } *sct.*
City and County of Philadelphia, }

This fifteenth day of May, 1822, before me, the subscriber, one of the aldermen of the city of Philadelphia, authorized by law to administer oaths within said city and county, personally appeared James Wharfe of said city, and made oath that he delivered to John Conard, esq., the marshal of the eastern district of Pennsylvania, a paper under seal, purporting to be an attachment from the circuit court of the District of Columbia for the county of Alexandria, of which the foregoing is a copy.

JAMES WHARFE.

Sworn and subscribed this 15th May, 1822, before me,
JAMES N. BARKER, *Alderman.*

At a United States' circuit court of the District of Columbia, continued and held for the county of Alexandria, the 25th day of May, 1822, on the motion of the plaintiff, by his attorney, it is ordered that John Conard, marshal of the eastern district of Pennsylvania, do return here, on the 2d Monday in June next, the attachment issued from this court on the 9th day of this month, May, in the said case of James Greenleaf's lessee against the said William R. Cozens, to attach Deborah Stewart, a witness in the said cause; and which said attachment appears to have been put in the hands of the said John Conard, marshal as aforesaid, on the 15th day of the said month of May, to execute, and which he has not returned.

And on the 15th day of June, 1822, it appearing to the court that a copy of the order made in this case, on the 17th day of this term, requiring John Conard, marshal of the eastern district of Pennsylvania, to return here on the 2d Monday of this month, an attachment issued by this court, on the 9th day of May last, in the above suit, against Deborah Stewart, which had been put into the hands of said John Conard, to be executed on the 15th day of the mouth last mentioned, had been duly served on the said John Conard; and he having failed to make return accordingly, and yet failing to make such return, on the motion of the plaintiff, an attachment is awarded him against the said John Conard for a contempt of this court, in failing to obey the said order requiring to make the return aforesaid returnable here on the first day of the next term, and directed to James Wharfe and Thomas Garner, who, or either of them, are authorized to serve the same.

DISTRICT OF COLUMBIA, *to wit:*

[L. s.] The United States of America to James Wharfe and Thomas Garner, or either them, greeting:

Attachment vs Marshal of Pennsylvania.

We command you that you attach John Conard, marshal of the eastern district of Pennsylvania, if he be found within the said District, and him safely keep, so that you have his body before the honorable judges of the United States' circuit court of the district of Columbia, for the county of Alexandria, at the court-house in the town of Alexandria, the first day of the next court, to answer us of a certain contempt of our said court to us offered, as it is said, and of such matters and things as the court shall prefer against him; and have then there this writ. Witness, the honorable William Cranch, Chief Judge of the circuit court of the District of Columbia, this 25th day of June, 1822.

EDM. I. LEE, *C. C.*

Return. I do hereby certify and declare that, on the first day *day* of the present month, I did exhibit the annexed process to John Conard, esquire, and requîred of him to produce the body of Deborah Stewart, to give evidence (in a certain cause depending in the circuit court of the United States for the District of Columbia for the county of Alexandria, wherein James Greenleaf's lessee is plaintiff, and William R. Cozens is defendant) before the honorable Richard Peters, judge of the district court of the United States for the eastern district of Pennsylvania. So answers,

JAMES WHARFE.

PHILADELPHIA, *November* 4, 1822.

Spa. duces tecum aw'd to bring Deborah Stewart before judge of E. D. of Pennsylvania.

And on the said 15th day of June 1822, on the complainant's motion a subpœna is awarded him against Deborah Stewart, requiring her to appear before the honorable Richard Peters, judge of the district court of the eastern district of Pennsylvania, at such time and place as he shall appoint, and to bring with her a certain agreement of bargain and sale, under seal, between Robert Morris, John Nicholson, and James Greenleaf, of the one part, and Walter Stewart, of the other part, for certain property in the City of Washington, executed by the parties on or about the 19th of February, 1795, in the presence of Garrett Cottringer and John Jones, the subscribing witnesses thereto, it appearing to the satisfaction of the court that the said Deborah Stewart resides more than one hundred miles from the town of Alexandria, the place of trial of said suit.

[This subpœna does not appear among the papers.]

Summons for Deborah Stewart.

JAMES GREENLEAF's lessee, *vs.* WILLIAM R. COZENS, and others. } In ejectment.

Circuit court of the District of Columbia for the county of Alexandria.

TO MRS. DEBORAH STEWART:

You are hereby summoned to appear before me, at my office, corner of Fifth and Chesnut street, at eleven o'clock in the forenoon of Monday, the tenth day of September instant, then and there to give evidence in the above causes, agreeably to the provisions of the act of Congress of the United States, and to bring with you the following papers, to wit: an original agreement of bargain and sale, under seal, between Robert Morris, John Nicholson, and James Greenleaf, of the one part, and Walter Stewart, of the other part, for certain property in the city of Washington, executed by those parties on or about the 19th day of February, 1795, in the presence of Garrett Cottringer and John Jones, the subscribing witnesses thereto; an original agreement of bargain and sale, under seal, between Walter Stewart and Thomas L. Moore, of the one part, and James Greenleaf, Robert Morris, and John Nicholson, of the other part, for certain property in the City of Washington, executed on or about the 16th June, 1795, by "James Greenleaf, for self and R. Morris, and J Nicholson," and by "Walter Stewart, for self and T. L. Moore," in the presence of George Stacey and Zachariah Cox, the subscribing witnesses thereto. Given under my hand and seal, this eighth day of September, A. D., eighteen hundred and twenty-one.

ROBERT WHARTON,
Mayor of the city of Philadelphia.

CITY OF PHILADELPHIA, *ss.*

Certificate of the mayor of Philadelphia.

Be it remembered that, on the eighth day of September, Anno Domini one thousand eight hundred and twenty one, application was made to me, Robert Wharton, esquire, mayor of said city, to take the deposition of Mrs. Deborah Stewart, in the aforegoing case of James Greenleaf's lessee against William R. Cozens and others, and for notice to the said Deborah Stewart to appear before me, and to bring with her certain papers in her possession, according to the act of Congress in such case made; that in consequence of said application, the foregoing notice was served upon the said Deborah Stewart; that, on the said tenth day of September instant, at 11 o'clock, A. M, Charles S. Coxe, esq. counsel of said Deborah Stewart and Henry Stewart, her son, appeared before me at my office. The counsel of said Deborah Stewart resisted the application of the said James Greenleaf, protesting on her part that, admitting the said papers called for in the aforegoing notice were in possession of said Deborah Stewart, as the heirs of the late Walter Stewart, and of the late Thomas L. Moore, claimed in equity the property which was the subject matter of said agreements; and as the production of said agreements might prejudice said claim, that the said Deborah Stewart, executrix of said Walter Stewart, could not be compelled to answer any questions or produce any papers relating to the said agreements, or their subject-matter. The said James Greenleaf required that I should compel the said Deborah Stewart, by the means pointed out in the said act of Congress, at least to appear before me and answer on oath, or at least to make oath; that she declined to answer any questions, or produce said agreements, because it would or might prejudice the interest of herself, as claiming under the said Walter Stewart by said agreements. Having doubts on my mind as to my power to compel the said Deborah Stewart to answer or to produce said agreements, under the circumstances of the case, I, after due consideration, dismissed the parties without further proceedings, and declined to compel the said Deborah Stewart to come before me at all. In witness whereof, I have hereunto set my hand, and caused the seal of this city to be affixed, this twentieth day of September, A. D. 1821.

[L. S.] ROBERT WHARTON, *Mayor.*

Defendant's exceptions.

Defendant's exceptions.

In the further trial of this cause, the plaintiff's counsel offered as a witness the Hon. William Cranch, who was objected to by the defendant's counsel; and they produced a deed from James Greenleaf to the said Cranch, as follows:

Deed of trust from Greenleaf to Cranch and Morton.

This indenture made the twenty-fourth day of November, in the year eighteen hundred and twenty, between James Greenleaf, of the city of Philadelphia, gentleman, of the one part, and William Cranch, of the city of Alexandria, in the District of Columbia, esquire, and Richard C. Norton, of the same place, esquire, of the other part. Whereas, the said James Greenleaf stands indebted unto divers persons in different sums of money, and is desirous of appropriating his estate and effects to the payment and discharge of the same; now this indenture witnesseth that the said James Greenleaf, in consideration of the premises, and of the sum of one dollar to him in hand paid

at and before the sealing and delivery of these presents by the said William Cranch and Richard C. Norton, and by each of them, the receipt whereof is hereby acknowledged, and for divers other good causes and codsiderations him thereunto moving, hath granted, assigned, bargained and sold, aliened, enfeoffed, released, and comfirmed, and by these presents fully and absolutely doth grant, assign, bargain and sell, alien, enfeoff, release and confirm, unto them the said William Cranch and Richard C. Norton, and the survivor of them, and the heirs, executors, administrators, and assigns of such survivor, all and all manner of goods, chattels, *monies*, credits, book accounts, claims, specialties, lands, tenements, and hereditaments and all other thing whatsoever of him the said James Greenleaf, as well real as personal, and particularly all and singular the lot and lots, piece and pieces, parcel and parcels, of ground of and belonging to him the said James Greenleaf, situate, lying, and being in the city of Washington, or elsewhere; and the rights, privileges, and appurtenances thereof, and all the estate, right, title, claim, interest, and demand, whether in possession, reversion, or remainder, in law or equity, joint or several, of the said James Greenleaf, of, in, to, or out of the estate, claims, property, and effects herein before mentioned and referred to, and every part and parcel thereof. To have and to hold the same, and every part and parcel thereof, unto them, the said William Cranch and Richard C. Norton, and the survivor of them, and the heirs, executors, administrators, and assigns of such survivor, to the only proper use, benefit, advantage, and behoof of them the said William Cranch and Richard C. Norton, and the survivor of them, and the heirs, and executors, administrators, and assigns of such survivor, for ever in trust: nevertheless, and for the only objects, uses, interests, and purposes following, that is to say: first, after paying and discharging the costs and expenses incident to the trust hereby created, and the execution thereof, to pay and satisfy to all and singular the bona fide creditors of the said James Greenleaf, out of the estate, property, and effects hereby assigned or intended so to be, the full and just amount of their several and respective claims, provided the estate, property, and effects, hereby assigned, or intended so to be, shall be sufficient to pay and discharge the said creditors to the full amount of their respective claims, and to indemnify and save harmless all and every person and persons of and from any risk, responsibility, and loss, for or by reason of any liability incurred or assumed for the said James Greenleaf, whether by reason of endorsement, suretyship, or otherwise; and if the estate, property, and effects hereby assigned be insufficient to pay or satisfy all the debts and engagements of the said James Greenleaf, and to indemnify and save harmless all those persons who may have assumed or incurred liability as aforesaid for, or on account of the said James Greenleaf, then to pay and discharge the same debts and engagements, and to indemnify and save harmless from the said liabilities, *pro rata*, and in proportion to the several and respective amounts thereof; secondly, after full and entire payment, satisfaction, and discharge of all and singular the debts and engagements aforesaid, and after full, entire, and perfect indemnity from all liability incurred or assumed as aforesaid, then to pay and transfer to the said James Greenleaf, his heirs, executors, administrators, and assigns, all the surplus of estate, property, and effects, hereby assigned, or intended so to be, which may remain in the possession or under the *control* of the said William Cranch and Richard C. Norton, assignees as aforesaid, or the survivor of them, or the heirs, executors, or administrators of such survivor. And

the said James Greenleaf both by these presents constitute, nominate, and appoint, and in his place and stead put the said William Cranch and Richard C. Norton, as his attorneys and attorney irrevocable, jointly and severally, in the name of him the said James Greenleaf, or in the names of them the said William Cranch and Richard C. Norton, to ask, demand, sue for, levy, recover, and receive, all such sum and sums of money, debts, dues, amounts, claims, bills, bonds, reckonings, controversies, or demands, as may be due, owing, or growing due to, or demandable by the said James Greenleaf, and to settle, adjust, and compromise for the same, or any part thereof, and to grant acquittances, releases, and other sufficient discharges for the same, and to execute deeds of conveyance in fee-simple, or for any less estate, and to do, execute, and perform all such act and acts, thing and things, device and devices in the law, that may be needful or necessary to carry into effect the objects and purposes hereof; the said James Greenleaf hereby giving and granting to the said William Cranch and Richard C. Norton, his full power, strength, and authority in the premises, and ratifying and holding for firm and effectual all and whatsoever they, the said William Cranch and Richard C. Norton, and the survivor of them, and the heirs, and executors, and administrators of the survivor shall lawfully do therein. And the said James Greenleaf doth hereby constitute and appoint John G. M'Donald, of the City of Washington, and William G. Cranch, of the city of Alexandria, jointly and severally, his attornyes and attorney, authorizing them, or either of them, to acknowledge this deed in the District of Columbia, and in all other necessary places, for, and as the act and deed of him *of him* the said James Greenleaf, according to the laws in that case made and provided, and to cause or procure the said deed to be duly recorded. In witness whereof, the parties to these presents have hereunto set their hands and seals the day and year above written.

JAMES GREENLEAF. [SEAL.]

Sealed and delivered in the presence of—
JAMES BAYARD.
J. R. INGERSOLL.
HOR. HUBBELL.

On the twenty-fourth day of November, in the year eighteen hundred and twenty, personally appeared before me James Greenleaf, above named, and under due form of law, acknowledged the foregoing indenture to be his act and deed, and desired that it might be recorded as such. In witness whereof, I have hereunto set my hand and affixed my seal the day and year last above written.

RICHARD PETERS. [SEAL.]

DISTRICT OF COLUMBIA, } *to wit:*
County of Washington, }

On the 23d day of April, 1821, the within named James Greenleaf, in open court, in the circuit court of the said District for the county of Washington, acknowledged the foregoing instrument to be his act and deed.

Teste, WM. BRENT, *Clk.*